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THE LAW
OF
MASTER AND SERVANT:

BEING A
TREATISE ON THE LAW RELATING TO CONTRACTS OF SERVICE,
APPRENTICESHIP, AND EMPLOYMENT.

Part I.—COMMON LAW.

Part II.—STATUTE LAW.

BY
SIR JOHN MACDONELL, M.A., LL.D., C.B.,
ONE OF THE MASTERS OF THE SUPREME COURT OF JUDICATURE.

SECOND EDITION

BY
EDWARD A. MITCHELL INNES, M.A. OXON.,
ONE OF HIS MAJESTY'S COUNSEL.

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PREFACE.

THE first edition of this book appeared in 1883. Since that time that portion of the law with which it deals has undergone many changes, which are themselves the outcome and reflection of other changes, social, political and industrial. Sub-division of labour has increased; the combined operations of labour, and with them the relations of employer and employed, have grown more complex; organization has made Labour both conscious of its power and articulate in its demands.

The result has been to alter considerably both the volume and character of industrial legislation. Even a cursory consideration of the statutes printed in Part II. of this book will show the growth of legislative control over the conditions of employment, and of State interference in questions connected with the relations of employer and employed.

Perhaps one of the most interesting and significant instances of this tendency will be found in the application of the civil law of conspiracy to trade disputes. This question, which has been the subject of many recent cases, seemed to have been put on a firm basis by the decision of the House of Lords in *Quinn v. Leatham*. That decision stood for five years. In 1906 there was

passed a statute, known as the Trade Disputes Act, 1906, by virtue of which the civil law of conspiracy, as laid down in *Quinn v. Leathem*, has no application to acts done in contemplation or furtherance of a "trade dispute" as therein defined.

But this Act goes further. It had been decided in *Taff Vale Rail. Co. v. Amalgamated Society of Railway Servants* that a trade union could be sued and its funds be made answerable, in a properly constituted action, for the torts of its agents. The Trade Disputes Act, 1906, annuls this decision by prohibiting actions of tort against trade unions.

I have tried to consult especially the interests of the lawyer who has not ready access to a law library. With that object in view, there have been printed, at the risk of unwieldiness, all the rules, forms and orders under such statutes as the Employers and Workmen Act, 1875, the Employers' Liability Act, 1880, and the Workmen's Compensation Act, 1906.

Unfortunately—and this fact accounts to a large extent for the delay in the appearance of this edition—Sir JOHN MACDONELL has been prevented by the claims of other work from taking part, as he had hoped, in the preparation of the present edition. He wrote the first chapter; his notes of decisions and changes in the law have been of very great assistance; while his suggestions and his supervision, particularly in connection with the Chapters on Trade Unions and the Truck Acts, have been most valuable. In any case, the authority of his name, and the knowledge that he has interested himself

in the preparation of this edition, must greatly add to whatever value it may possess.

The index has been entirely re-written, it is hoped with good result.

I am indebted to the industry and experience of Mr. SYDNEY EDWARD WILLIAMS, of 4, New Square, Lincoln's Inn, for the Table of Cases and the Table of Statutes.

I desire gratefully to acknowledge the great assistance given to me by Mr. KENNETH MARSHALL and Mr. M. P. GRIFFITH-JONES, both of Farrar's Building, Temple, in the reading and correction of the proofs—a task in which other friends have kindly borne a part.

EDWARD A. MITCHELL INNES.

FARRAR'S BUILDING, TEMPLE.

September, 1908.

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ADDENDA.



- Page 90, n. (g). *Add*:—Waiters employed for purposes of trade are not within the Act: *Whiteley v. Burns*, [1908] 1 K. B. 705.
- „ 390, notes on s. 13. *Add*:—Sub-s. (1).—Where two seams constitute a “mine,” the miners working in one seam cannot appoint a checkweigher in respect of the mineral gotten from that seam: *Thorpe v. Davies*, [1908] 2 K. B. 750.
- „ 585, after s. 13, sub-s. (5). *add*:—This certificate is conclusive as to the validity of the proceedings under which the rules or any alterations in the rules have been passed: *Osborne v. Amalgamated Society of Railway Servants of England, Ireland, Scotland and Wales* (1908), 24 Times L. R. 827.
- „ 608, at end of second paragraph, *add*:—See *Conway v. Wade* (1908), 24 Times L. R. 874.
- „ 646, line 6, after “sue” *add note*:—But such a deduction is now prohibited by the Fatal Accidents (Damages) Act, 1908 (8 Edw. 7, c. 7).
- „ 649, last line, after 24 Times L. R. 711, *add*:—[1908] 2 K. B. 802: *Dechurst v. Mather*, [1908] 2 K. B. 754.
- „ 653, at end of first paragraph, *add*:—*Rowland v. Wright* (1908), 24 Times L. R. 852.
- „ 653, after line 25, *add*:—See *McDonald v. Owners of Steamship “Banana”* (1908), 24 Times L. R. 887.
- „ 654, at end of third paragraph, *add*:—See *Fitzgerald v. W. G. Clarke & Son*, [1908] 2 K. B. 796.
- „ 655, at end of second paragraph, *add*:—See also *Broderick v. London County Council* (1908), 24 Times L. R. 822—an unsuccessful claim in respect of enteritis contracted by inhaling gas while working in sewers; *Ismay, Irvine & Co. v. Williamson* (1908), 24 Times L. R. 881 (H. L.)—heat-stroke in a stoke-hole held to be an “accident.”
- „ 661, notes on s. 1, sub-s. (2) (b). *Add*:—A claim for compensation, subsequently withdrawn, is no bar to an action for damages: *Rouse v. Dixon*, [1904] 2 K. B. 628. See *Cribb v. Kynoch*, [1908] 2 K. B. 551.
- „ 662, at end of first paragraph, *add*:—A workman gave the notice and made the claim within the time required by s. 2, sub-s. (1). He took no further proceedings under the Act. Thirteen months after the accident he brought an unsuccessful action for damages. Subsequently he applied for compensation under the Act: *Held*, that the application could not be entertained: *Cribb v. Kynoch*, [1908] 2 K. B. 551.
- „ 667, notes on s. 6, sub-s. (1). *Add*:—For the meaning of this sub-section, see *Page v. Burtwell*, [1908] 2 K. B. 758.
- „ 667, at end of third paragraph of notes on s. 6, *add*:—*Sed quære*, having regard to the meaning given to “recover” in *Page v. Burtwell*, [1908] 2 K. B. 758.
- „ 671, notes on s. 8. *Add*:—As to the burden of proof under sub-ss. (1) and (2), see *Haylett v. Vigor* (1908), 24 Times L. R. 885—a case of “lead poisoning or its sequelæ.”

THE LAW OF MASTER AND SERVANT.

CHAPTER I.

VARIETIES OF LABOUR AND CONTRACTS RELATING THERETO.

THE varieties and forms of labour may be classified according to the purpose or object in view.

Political economists, in classifying such forms, have had chiefly in view the laws regulating wages. The older writers on political economy, dividing society into capitalists and labourers, included under the latter all classes of workers. Later writers, aware of the defects of this classification, have sub-divided "labourers" into various groups, such as the following :—

MR. MILL.	MR. GIDDINGS.	MR. TAUSSIG.	MR. HOBSON.
1. Professional classes.	Responsible workers.	Hired labourers.	Manual.
2. Highly skilled labourers.	Automatic workers.	Independent labourers.	Routine Mental.
3. Lower classes of skilled labourers.	Responsible manual labour.	—	Artistic.
4. Unskilled labourers.	Automatic labour.	—	Intellectual.

Statisticians in classifying the forms of labour have had in view, as a rule, the requirements of a census. They have generally divided such forms into occupations relating to production of raw materials, transformation and completion of raw materials, public services, and the liberal professions. For example, the chief

groups in the classification proposed by Dr. Josef Körösi are :—Agriculture, mining, industry or manufacturing, transport or carriage, commerce, defence (army and navy), public service, servants of all sorts, day labourers, persons living on their own means, non-effectives and apprentices, the dangerous classes, &c. Some of these divisions (which are sub-divided into many groups) are of no legal significance. Others correspond to legal divisions; such is the tendency to legislate for special trades and occupations, that some divisions adopted for statistical purposes have become of legal importance (*a*).

Labour may be classed along with commodities generally. It is usual and correct to speak of a labourer being hired; his labour may also be described as purchased. Such has been hitherto the view of many economists, who have spoken of labour as a commodity, and have sought to approximate the sale of labour to that of commodities or goods (*b*). Lately, however, both economists and legislators have been disposed to view labour apart from commodities. To treat labour and commodities alike was a feature of Roman law. The bulk of the work performed in modern times by labourers and artisans in ancient Rome fell to slaves, who were often let out by their masters. The *opera* or *fructus* of the slave were viewed in much the same light as the produce of machines, tools, &c. which had been let out to hire. Labour by freedmen was common; it was often an implied term of emancipation that the freed slave should perform certain services for his former master. In the Digest (*c*), under the rubric *De operis libertorum*, are references to some of the problems which now occupy our Courts. But for the most part Roman lawyers dealt with questions as to work and labour which have become of little importance. The texts as to the rights and duties of masters, as to wages and hours of work, are few, brief, and imperfect.

In Roman law the hiring of land and the law of master and servant were alike treated under the head of *locatio-conductio* (*d*). Contracts for the labour and services of freemen for reward fell

(*a*) Die Internationale Classificierung des Berufsarten; *Bulletin de l'Institut International de Statistique*, VIII. 148. See also article "Beruf und Gewerbestatistik" in *Handwörterbuch der Staatswissenschaft*; Supplement 202.

(*b*) "The capitalist epoch is characterised by this, that labour power takes, in the eyes of the labourer himself, the

form of a commodity which is his property:" Marx on *Capital*, I. 149, n.

(*c*) Endemann, Die rechtliche Behandlung der Arbeit, 641, *Jahrbücher für Nationalökonomie* (volume 67), 1896, where the chief passages in the Digest on this subject are collected.

(*d*) See remarks of Lotmar, *Der Arbeitsvertrag*, I., p. 75.

under the sub-divisions *locatio-conductio operarum* or *operis*. As the landlord was the *locator* of a farm, and the lessee the *conductor*, so the servant was the *locator operarum*, and the master the *conductor operarum*. If a workman had to do something in respect of goods or chattels supplied to him, *e.g.*, if he had to weave materials into cloth, he was called *conductor operis*, and the owner of the materials was *locator operis*. It was an artificial division. As M. Renouard remarks :—"L'artifice du langage peut réunir les deux louages en une même phrase, mais ne saurait créer entre eux une réelle et parfaite assimilation."

Another peculiarity of Roman law originating in the prevalence of slave labour, was the distinction between *operae illiberales* and *operae liberales*; the former being, the latter not being, the subject-matter of a contract *locatio-conductio operarum*. According to Roman law the contract of work and labour was treated as *locatio-conductio* or *mandatum* according as the service was menial, mechanical or intellectual, remunerated or gratuitous.

Traces of the Roman law are to be found in the provisions of some modern codes as to mandate. According to Roman law, as was natural in a society in which the bulk of manual work was done by slaves, and only a few professions were open to free men, mandate was presumed to be gratuitous. According to the facts of modern life, such a contract is, as a rule, for remuneration. Some modern codes which bear the impress of Roman law state as the rule what is the exception, and proceed to deal as exceptional with what is in fact usual, *e.g.*, the Swiss *Code des Obligations*. (Title XIV. 392.)

The Roman law of work and labour was evolved from *locatio-conductio*; and the efforts of legislators and judges in countries where Roman law prevailed was to adapt the principles of *locatio-conductio* to new circumstances. The English law of work and labour has been evolved from the law of master and domestic servant; and a large part of this volume describes the efforts of the Courts to adapt that law to new relations differing in important respects from the relation of master and servant.

Some deviations from a strictly logical classification may be noted :—

- (1) The separation of contracts of work and labour from other contracts theoretically of the same class. In theory the contract of a carrier by land and sea, and of a

railway company, is a contract of work and labour. But from early times the duties of a carrier have been so peculiar that they have been treated separately from the contract of work and labour.

- (2) The contract of agency is akin to that of work and labour. In early English common law they were not very distinctly separated; the phrase principal and agent is of comparatively modern use. But it has been found expedient to separate work and labour from agency.
- (3) There has been an extension of the idea of master and servant to many relations really different from that of master and servant. It has become necessary to consider the obligations of employers to persons who are not, in a strict sense, servants; by a sort of fiction these relations have been treated as examples of master and servant.

The following are the chief classes of contracts dealt with in this volume:—

(I.) Contracts of master and servant strictly so called; A. being paid by B., and bound to obey his orders as to the manner of doing work. (See p. 7.)

(II.) Contracts for exclusive personal service, but without control. A. contracts to do work for B. and for no other person, but is free to do the work in the manner he pleases (*e*). This second class of contracts is described in certain Acts of Parliament as “contracts of service or contracts personally to execute any work” (*f*). Probably in this category should be placed contracts such as that which came before the Court in *Stuart v. Evans* (*g*). A., a slater, employed by B., the defendant, to slate houses for him; A., who provided his own tools, was paid by the piece; B. provided slates, poles and scaffolding. The Court held that A. was a “workman” within the meaning of sect. 8 of the Employers’ Liability Act, 1880.

(III.) Contracts with a particular workman for himself and on behalf of others.

Such contracts are common in many industries, *e.g.*, employers let outlying parts of mines to “butty-masters” or “working-contractors,” to pay the hewers by the hour and the piece; or

(*e*) See contract in *Bowen v. Hall* (1881), 6 Q. B. D. 333.

(*f*) Employers and Workmen Act, 1875, s. 10; see 4 Geo. IV. c. 34, s. 3.

(*g*) (1883), 49 L. T. 138.

a gang of plate-layers or rivetters is engaged through their "first-hand" to complete a job in building an iron vessel (*h*). The distinction between such cases as *Brown v. Butterley Coal Co.* (*i*) and *Ruth v. Surrey Commercial Dock Co.* (*j*) on the one hand, and *Marrow v. Flimby* (*k*) on the other, is sometimes very fine. In *Brown v. Butterley Coal Co.* (*i*), the plaintiff, a miner, was held to be a servant of the defendants, though he had been employed by one of the "butty-men." The chief evidence of the contract of service with the company was the fact that the defendants had drawn up certain rules, which all persons at work in the mines were bound to obey. In *Marrow v. Flimby* (*l*) a man who had entered into a contract to sink a shaft in a coal-mine was held not to be a "workman" who had "entered into or worked under" a contract with the defendant company; and it was also held that the control given by the Coal Mines Regulation Act, 1887, and by the special rules of the mine, to the manager over all persons in the mine did not make the sinker and his men "workmen" of the defendant company within sect. 10 of the Employers and Workmen Act, 1875.

In the notes to that statute (*m*) are collected the chief cases in which the Courts have had to consider the distinction between a sub-contractor and a workman, which may be very faint, especially if the latter is paid by the piece or employs others under him to assist him. In some employments the line of distinction is almost invisible. To constitute a "workman," there must be some control over the mode of doing the work, and not merely a contract for the result.

(IV.) Contracts to perform a certain work; no control being exercised by the employer. This is the *locatio-conductio operis facienda* of Roman law, and the *werkrertrag* of the German Code. (Articles 631—651.) Of this contract many examples are mentioned in this book.

(V) A further division may be noted—that of "undertaker" (*entrepreneur, unternehmer*), and employer or master.

This term has of late come into general use in political economy,

(*h*) In Nordhoff's "Modern California" (p. 143), is an example of this form of contract. The employer deals directly only with the foreman: "I tell him only what I want done, and settle with him alone. I complain to him and hold him alone accountable."

(*i*) (1885), 53 L. T. 964.

(*j*) (1891), 8 Times L. R. 116.

(*k*) [1898] 2 Q. B. 588. See *Fitzpatrick v. Evans*, [1902] 1 K. B. 505.

(*l*) [1898] 2 Q. B. 588. See *Fitzpatrick v. Evans*, [1902] 1 K. B. 505.

(*m*) Pt. ii. p. 618, *infra*.

and is to some extent used in law, to describe capitalists who receive remuneration for their personal services (*u*).

(VI.) Contracts of apprenticeship (*o*).

(VII.) Collective contracts; a phrase recently introduced to designate contracts which are now very common in many trades, and in which the terms as to wages and employment generally are the same for a number of persons (*p*).

u) See Workmen's Compensation Act, 1897, s. 7 (2). The term "undertaker" does not appear in the Workmen's Compensation Act, 1906; though "work undertaken by the principal" is a phrase

used in sect. 4, sub-sect. (1).

o) See p. 40, *infra*.

p) Lotmar, *Der Arbeitsvertrag*, I., p. 756; *Industrial Democracy*, by Sidney and Beatrice Webb, I., p. 173.

CHAPTER II.

DEFINITION OF MASTER AND SERVANT.

A SERVANT is one who for consideration agrees to work subject to the orders of another (*a*).

Few judicial definitions of a servant are to be found in the reports. Judges have generally acted in regard to this matter on

(*a*) The difficulty of defining the relation of master and servant will be best appreciated by considering some of the attempts to do so. "A person who contracts with another to do certain work for him is the servant of that other until the work is finished, and no other person can employ such servant to the prejudice of the first master:" *Blake v. Lanyon* (1795), 6 T. R. 222; cited with approbation by Crompton, J., in *Lundley v. Gye*, 2 E. & B. at p. 226. Perhaps these words, which would include contractors, were not intended as a complete definition. "The test is very much this, viz., whether the person charged is under the control, and bound to obey the orders of his master:" Blackburn, J., in *Queen v. Negus* (1873), 2 C. C. R. 37, with reference to "clerk or servant" in 24 & 25 Vict. c. 96, s. 68. "A servant is a person subject to the command of his master as to the manner in which he shall do his work:" Bramwell, L. J., in *Yewens v. Noakes* (1880), 6 Q. B. D. 532. "A clerk or servant is a person bound either by an express contract of service or by conduct implying such a contract to obey the orders and submit to the control of his master in the transaction of the business which it is his duty as such clerk or servant to transact:" Stephen's *Digest of Criminal Law*, 220. In a work on the *Law of Master and Servant*, published in 1767, I find the following definition: "A servant seems to be such an one as, by agreement and retainer,

oweth duty and service to another, who, therefore, is called his master." "A servant is one who is employed to render personal service to his employer, otherwise than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the latter, who is called his master:" *New York Code*, s. 1034. "In strictness a servant is one who, for a valuable consideration, engages in the service of another, and undertakes to observe his directions in some lawful business:" Cooley on *Torts*, 531. "A person who ultroneously agrees to give his services to another for a determinate time, and an ascertained hire, and who may get rid of the contract by paying damages:" Fraser on the *Law of Master and Servant*. "A person who hires his services ultroneously to another, for a certain price in money, and who may get rid of the contract by paying damages:" Fraser, *Personal and Domestic Relations* (ed. 1846), ii. 367. "Voluntary (as opposed to 'necessary') servants are those who enter into service without compulsion, by an agreement or contract, for a determinate time;" Erskine, 1, title 7, 62. "A master is one who has legal authority over another; and the person over whom such authority may be rightfully exercised is his servant" (Schouler on *Domestic Relations*, 599), which would equally apply to the relations of master and servant and master and slave. "A master is one who, by law, has a right to personal

the principle *omnis definitio in lege periculosa est*. Though important consequences, civil and criminal, hang upon the distinction between

authority over another; and such person, over whom such authority may be rightly exercised, is servant:" Reeve's *Domestic Relations*, 399. This is open to the same objection as the last. "Shortly," says Lord Justice Bramwell, "the relation of master and servant exists where the master can not only order the work, but how it shall be done. When the person to do the work may do it as he pleases, then such person is not a servant:" *Letter to Sir Henry Jackson*. "A servant is one who voluntarily agrees, whether for wages or not, to subject himself at all times during the period of service to the lawful orders and directions of another in respect of work to be done:" Eversley on *Domestic Relations*, 907. "The relation of master and servant exists only between persons of whom one has the order and control of the work done by the other:" Pollock on *Torts* (6th ed.), 78. Dr. Johnson's definition is "one that attends another, and acts at his command"—a definition of menial servants. Austin makes the relation turn on the fact that either of the parties to the relation "incurs obligations and acquires rights of which the objects are not determinable individually, though their kinds may be fixed:" *Jurisprudence* ii. 976. In other words, the relation of master and servant is a certain status, a view which, though true of domestic servants, &c., does not hold good of one employed to do one act, or a similar set of acts repeatedly. See, too, *R. v. Spencer* (1815), R. & R. 293. "He is to be deemed the master who has the supreme choice, control, and direction of the servant, and whose will the servant represents, not merely in the ultimate result of his work, but in all its details:" Shearman & Redfield on *Negligence*, s. 73. "In its legal acceptance it (servant) includes any one who is bound to perform services, on the authority and for the benefit of another, his master, whether these services are rendered gratuitously or for a stipulated consideration:" Scone's *Law of Master and Servant*, quoted in Currie's *Indian Criminal Code*, 354. See Hobbes's definition, *English Works*, ii. 109.

As to the meaning of "servant" in Wills, see *Jones v. Hendley* (1685), 2 Rep. Ch. 162 (legacy "to all my servants." Only those entitled who, being menial servants, were in testator's service be-

fore the making of the will and remained in his service till his death). *Townshend v. Windham* (1766), 2 Vern. 546. "Stewards of Courts, and such who are not obliged to spend their whole time with their master, but may also serve any other master" not within bequest to "such of my servants as shall be living with me at the time of my death;" cf. *Armstrong v. Clavering*, *infra*, in this note. *Sleech v. Thorington* (1754), 2 Ves. Sen. 560 (bequest to "the three servants that shall live with me at the time of my death;" testatrix had three at time of death; all included). *Chilcot v. Bromley* (1806), 12 Ves. 114 (bequest to "all my other servants who shall be living with me at the time of my decease" did not include a coachman provided with carriage and horses by a job-master, though returned by testator as his coachman under Acts imposing duty on male servants). *Herbert v. Reid* (1810), 16 Ves. 481 (legacy to plaintiff "if in his service" at time of testator's death; parol evidence to show that plaintiff, though sent from the testator's house before his death, was considered by him to be in his service; held entitled). *Howard v. Wilson* (1832), 4 Hagg. Ecc. 107 (a coachman, who was originally hired by, and had lived for five years with, the testatrix, and who remained with her, though she changed her job-men, entitled, under "each of my servants living with me at the time of my death"; the job-masters paid him wages, and found him in livery). *Booth v. Dean* (1833), 1 My. & K. 560 (under bequest to "each of my servants one year's wages over and above what may be due to them at time of my decease," only "family servants, usually hired by the year," and not a gardener or cow-boy at weekly wages). See *Breslin v. Waldron* (1855), 4 Ir. Ch. 333. *Parker v. Marchant* (1842), 1 Y. & C. 290 (a person in the testator's service at time of date of codicil, but who quitted it before his decease, entitled, under bequest "to the other servants"). *Bullock v. Ellice* (1845), 9 Jur. 936 (a farm bailiff who had lived with testator twenty-eight years, who had 350*l.* a year, and who was entitled to take pupils in agriculture, entitled under "one year's wages to each of my servants in my service at my death who shall have lived with me five years or upwards"). *Oyle v. Morgan* (1852), 1 D. M. & G. 359 (head gardener, living in one of testator's cottages, and not

servant and contractor, servant and bailee, servant and agent, servant and partner, Courts have, as a rule, abstained from defining the relation of master and servant. They have been content to deal with each case as it arose. For hundreds of years the word or similar terms have been used in statutes. Difficulties arose as to its meaning in one of the first Acts in which it appears, the 25 Edw. III. st. 2, s. 1 (*b*). Similar difficulties still frequently arise as to who is a servant within the meaning of the many Acts in which the word occurs. In consequence, no doubt, of this ambiguity, some modern statutes (*c*) use and define such terms as "employer" and "workman." The above definition is not offered as perfect. The term is, in fact, used loosely and in different senses. No definition

fed by him, not "a servant in my domestic establishment"). *Blackwell v. Pennant* (1852), 9 Hare, 551 (bequest of a year's wages to "servants living with me at the time of my decease, and who shall then have lived in my service for three years," included servants living in a different house from that in which testator lived; excluded servants not hired by the year). *Thrupp v. Collett* (1858), 26 Beav. 147 (under bequest to "servants in his (testator's) service at the time of his decease," two outdoor servants continuously employed at weekly wages, entitled; not so a boy employed at weekly wages in carrying letters a few months in the year, whilst the testator was at his country residence, though the boy was so employed at testator's death). *Armstrong v. Clavering* (1859), 27 Beav. 226 (a land agent and house steward, residing out of the house, entitled under a bequest to "all my servants and day labourers who shall be in my service at the time of my death"). *Re Serres's Estate, Venes v. Marriott* (1862), 31 L. J. Ch. 519 (legacy to claimant "in case she shall be in my service at my decease"; testator removed to lunatic asylum; claimant voluntarily quitted the house receiving wages for one year; testator died within that year; claimant not entitled to legacy). *Darlow v. Edwards* (1862), 1 H. & C. 547 (a servant who had been wrongfully dismissed two days before the testator's death, not entitled under bequest of an annuity, "provided she shall be in my service at the time of my decease"). *Re Hartley's Trust*, (1878) W. N. 104 (legacy to M. B., provided she remained in testatrix's service till her death; testatrix removed to lunatic asylum; M. B. dismissed with wages in lieu of notice; order in lunacy

directing sale of property of testatrix; M. B. not entitled to legacy). *In re Beugon, Benyon v. Griere* (1884), 32 W. R. 871 ("to each of my servants who shall at my death have been in my service twelve calendar months or longer, one year's wages, . . . and to my gardener, P. G., 300*l.* in addition." P. G. left service three years before testator's death; not entitled to (one year's wages or) 300*l.*). *In re Marcus, Marcus v. Marcus* (1887), 56 L. J. Ch. 830 ("my office and warehouse employes such as clerks and workmen, shall have to receive six months' full salary." This means employes in testator's service at the time of his death). *Re Drax, Savile v. Yeatman* (1887), 57 L. T. 475 (legacies to each of my "household servants": held, a coachman living in a cottage adjoining the pleasure grounds and two grooms occupying rooms over the stables close to the house not included). *In re Sharland, Kemp v. Rozey*, [1896] 1 Ch. 517 (bequest "to each man who shall have been in my employ over ten years." D., who had been in testator's service fifteen years, but was not in it at the date of the will, or at the time of the death, held entitled). See *Jarman on Wills* (5th ed.), vol. i. p. 305; *Williams on Executors* (9th ed.), vol. ii. p. 1007; *Redfield on Wills*, vol. i. sec. 53.

(*b*) An embroiderer* a servant or labourer within the statute, 47 Edw. III. f. 22; a collector of rents not within it, 19 Hen. VI. f. 53. See as to the difficulties which arose as to what servants could be punished for petty treason, 1 Hale P. of C. 380.

(*c*) See Employers and Workmen Act, 1875, s. 10; Employers' Liability Act, 1880; Truck Act, 1887; Workmen's Compensation Act, 1906; Trade Disputes Act, 1906.

DEFINITION OF MASTER AND SERVANT.

which would include all its significations in statutes, in questions as to common employment, in settlement cases, in actions for seduction or for enticing away, and in wills, is possible. The word has not been employed in the same sense at different periods of history. It has been extended to relations to which it was not once applicable.

Originally the term indicated a sort of status. A servant was generally a member of his master's household. He was in a sense under his master's *potestas*. He is mentioned in the same context as the wife or son or daughter of the house. The relation is often described as one of allegiance (*d*). The statute of treason, 25 Edw. III. s. 5, which enumerates various forms of treason, and which adds "there is another manner of treason (petit treason), that is to say, when a servant slayeth his master, or a wife her husband, or when a man, secular or religious, slayeth his prelate, to whom he oweth faith and obedience," presupposed that master and servant stood to each other in a degree of intimacy which is not now implied. Even at the same date the use of the term has varied according to the subject-matter. In actions for seduction, a person who does any trifling act of service is regarded as a servant (*e*). Mere casual temporary employment for a particular purpose will not suffice to make a person a servant within the meaning of some statutes (*f*). In the case of others this is enough (*g*). Servant is used, for example, in one sense in the Carriers Act (11 Geo. IV. & 1 Will. IV. c. 68, s. 8) (*h*), and in another in the Larceny Act (24 & 25 Vict. c. 96, s. 68) (*i*).

(*d*) Bacon's Abridg. V. 333; "servant." It was not maintenance for a master to help a servant with "costage," 3 Hen. VI. 53. The servant was entitled to use force in defence of his master, 21 Hen. VII. 39.

(*e*) See Chapter XIX.

(*f*) Roscoe, *Criminal Evidence*, 13th ed. 378; see, however, *R. v. Hughes* (1832), 1 Mood. C. C. 370.

(*g*) *Rex v. Spencer* (1815), R. & R. C. C. 299. "Servant" is often used as a synonym for domestic servant, *Fewens v. Noakes* (1880), L. R. 6 Q. B. 538. In Salmons on "*Domestic Service in United States*" (p. 207), the author recommends that "servant" be dropped as an offensive term conveying associations with slavery.

(*h*) See p. 236.

(*i*) The following are some of the chief decisions under Statutes with respect to "servant" and "clerk."

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Rex v. Squire (1818), R. & R. C. C. 349 (overseers of a township employed prisoner as their accountant and treasurer; received and paid all money receivable or payable on their account; servant or clerk within 39 Geo. III. c. 85).

Rex v. Hughes (1832), 1 M. C. C. 370

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Rex v. Barton (1829), 1 M. C. C. 237 (prisoner a clerk of chaplain who collected the sacrament money from the communicants, not the servant of the incumbent, churchwardens, or poor of township within 7 & 8 Geo. IV. c. 29, s. 47).

Reg. v. Walker (1858), 27 L. J. M. C.

The term "male servant" is for the purposes of the Inland Revenue Act (32 & 33 Vict. c. 14, s. 19) specially defined by the 39 Vict. c. 16, s. 5 (k).

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(prisoner employed as driver to drive a cow and calf and to bring back the price. He was employed to receive in one instance only; within 7 & 8 Geo. IV. c. 29, s. 47).

Reg. v. Tongue (1860), 30 L. J. M. C. 49 (prisoner secretary to a money club; his duty to summon meetings and to make out the promissory notes on demand and to countersign all cheques upon the treasurer; he received a salary).

Reg. v. Macdonald (1861), 31 L. J. M. C. 67 (prisoner a cashier and collector of a firm; he received in lieu of increase of salary percentage of profits; no control over business).

Reg. v. Proud (1861), 31 L. J. M. C. 71 (paid secretary of a friendly society, whose duties were to attend meetings of lodge, write minutes of proceedings, keep correct accounts of receipts and expenditures, &c. He was a member of the society).

Reg. v. Tite (1861), 30 L. J. M. C. 142 (prisoner a commercial traveller employed by prosecutors; paid by commission; at liberty to receive orders from others).

Reg. v. Hastie (1863), 32 L. J. M. C. 63 (secretary of a benefit society, who had, according to the rules, nothing to do with the receipt of money paid off by trustees, but who was in the habit of receiving such money; held that he might be convicted of embezzlement under 7 & 8 Geo. IV. c. 29, s. 47).

Reg. v. Dixon (1868), 11 Cox, C. C. 178 (prisoner engaged by U. at weekly wages to manage a shop. U. having assigned all his estate and effects to R., a notice was served on prisoner to act as agent of R. in the management of the shop. For fourteen days R. received the money from U., who continued to pay prisoner his wages during the whole period. Subsequently R. reconveyed the estate and effects to U. But the deed was not registered until after the embezzlement charged against the prisoner. Prisoner servant of U.).

Reg. v. Carpenter (1869), 1 C. C. R. 29 (prisoner, who was elected assistant overseer by the inhabitants in vestry, and subsequently appointed to that

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207 (prisoner kept a refreshment room; employed by prosecutors to get orders for manure; paid by commission; no definite time to be spent in collecting orders; with a view to obtain the security of guarantee society, prosecutors paid a salary of 1*l.* a year).

Reg. v. May (1861), 30 L. J. M. C. 81 (defendant employed to obtain orders for iron at a certain commission. It was his duty to account immediately to the prosecutors for any money he received).

Reg. v. Bren (1863), 33 L. J. M. C. 59 (prisoner a member of a committee formed of members of two friendly societies for the purpose of conducting a railway excursion; defendant and others nominated to sell tickets; received no remuneration; he did not pay over proceeds of tickets to person appointed to receive the money).

Reg. v. Glover (1864), 33 L. J. M. C. 169 (under-bailiff of County Court, not servant of high bailiff, though appointed by him; servant of the Court).

Reg. v. Bowers (1866), 1 C. C. R. 41 (prisoner first employed as agent or traveller for the sale of coals at a salary of one guinea a week and 1*s.* a ton commission to collect debts. Subsequently on his going into the retail trade salary stopped, and only paid by commission).

Reg. v. Mayle (1868), 11 Cox, C. C. 150 (M. employed as "London agent;" no salary; perfectly optional whether he obtained orders or not; not bound to collect on any particular day).

Reg. v. Marshall (1870), 11 Cox, C. C. 499 (prisoner employed by coal merchant; to receive 1*s.* 4*d.* per ton as procuration fee, and 4 per cent. for collecting, &c.; no salary; at liberty to go where he pleased for orders).

Reg. v. Negus (1873), 2 C. C. R. 34 (prisoner employed to solicit orders where he pleased; and to be paid by commission; received no salary; not to hire himself to others than prosecutor).

Reg. v. James Hall (1875), 13 Cox, C. C. 49 (an accountant and debt collector employed by prosecutors to collect certain specified debts according to his discretion; to be paid by percentage; jury found he was employed as a clerk:

(k) See *Yelland v. Vincent* (1883), 47 J. P. 233; *Yelland v. Winter* (1885), 50

J. P. 38; *Horan v. Hayhoe*, [1904] 1 K. B. 288.

Many contracts relating to work, labour, and service do not establish the relation of master and servant. Bailment, contracts of affreightment, contracts between principals and brokers or factors, clients and solicitors, are all contracts which may approximate to, but differ in important respects from, a contract of hiring

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office by warrant of two justices, and who performed the duties of overseer, well described in an indictment for embezzlement as the servant of the vestry, on the authority of *Reg. v. Watts*, 7 A. & E. 461).

Reg. v. Redford (1869), 11 Cox, C. C. 367 (secretary of building society who was also one of the trustees, servant of the trustees).

Reg. v. Turner (1870), 11 Cox, C. C. 551 (prisoner employed to act as the traveller of R. E., and "diligently employ himself in going from town to town . . . and soliciting orders;" R. E. had full control over his time and services. Prisoner agreed to act as traveller; at liberty to take orders for others, but not without prosecutor's written permission; to be paid by commission).

Reg. v. Bailey (1871), 12 Cox, C. C. 56 (A. employed as traveller to collect money due on execution of orders, and to pay over the money every evening of the day or on the following day; he might get orders when and where he pleased, but to be exclusively in the employment of prosecutors, and to give his whole time): C. C. R.

Reg. v. Foulkes (1875), 2 C. C. R. 150 (prisoner assisted his father as clerk to a local board, and in his father's absence acted for him as clerk to the board; but received no salary, and was not appointed as clerk by the board. The prisoner managed for his father the raising of a loan for the board; evidence that prisoner was a clerk or servant), C. C. R.

Reg. v. Stuart, [1894] 1 Q. B. 310 (director of a company for which he canvassed for orders and collected moneys, at a salary, liable under 24 & 25 Vict. c. 96, s. 68).

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Court for Crown Cases Reserved, held finding was wrong).

Reg. v. Harris (1893), 69 L. T. 25 (prisoner collected rates at such times and in such manner as he thought fit, and kept parish-books, for agreed sum of 3*l.*, for the overseer, who never interfered or gave orders: not liable for embezzlement under 24 & 25 Vict. c. 96, s. 68).

"It is a question for a jury whether a person accused of embezzlement is a clerk or servant or not," says Stephen, J. (*Dig. Crim. Law*, 6th ed., 271), with reference to 24 & 25 Vict. c. 96, s. 68; citing *R. v. Negus*, 2 C. C. R. 34; *R. v. Tite*, L. & C. 33; *R. v. May*, L. & C. 13. See *R. v. Hall* (1875), 13 Cox, C. C. 49. In some instances the question is one entirely for the judge: *R. v. Bowers*, 1 C. C. R. 41, where the documents decided the question.

See 31 & 32 Vict. c. 116, as to larceny by joint owners.

and service A. contracts with B. to build a wall of a specified length and height for a certain sum; A. is to be free to provide the necessary labour and materials in any manner he chooses; B. bargains for the result of A.'s labour and skill. Though a contract to work for B., this is different from an agreement by A. to build a wall for B., subject to his directions, and to labour exclusively for him during certain hours. In English law the former is a contract of work and labour, the latter, one of hiring and service. An artist receives a commission to paint a portrait; a journeyman painter is employed to paint coaches under the supervision of a foreman: a commissionaire is employed to go on a special errand; a lad is hired to carry the messages of an establishment; a carrier agrees to take a parcel from one place to another; it is a man's duty to carry the goods of a certain firm and subject to their directions—these are so many instances, respectively, of contracts of work and labour, and contracts of master and servant.

Some common tests of the existence of this relationship are not conclusive. Two persons are not always respectively master and servant, because the one can discharge the other (*l*). The hand which pays wages is not necessarily the master's (*m*). A person may be entitled to exercise control over others who work, and yet they may be not his servants, but the servants of a contractor (*n*). A. may be bound to give service exclusively to B., and yet he may not be for all purposes B.'s servant (*o*). The person who appoints or engages a servant is not necessarily the master; he may be only the agent of the master. Though the crew of a ship are generally engaged and may be dismissed by the captain, not the owner, they are the servants of the latter (*p*). A stevedore is appointed by the charterer of a vessel; he may be

(*l*) *Reedie v. London & North Western Rail. Co.* (1849), 4 Ex. 244.

(*m*) *Willett v. Boole* (1860), 6 H. & N. 26.

(*n*) *Allen v. Hayward* (1845), 7 Q. B. 960, but see remarks of Denman, C. J., at p. 975; *Marrow v. Flumby*, [1898] 2 Q. B. 588; *Fitzpatrick v. Evans*, [1901] 1 Q. B. 756; *Johnson v. Lindsay*, [1891] A. C. 391.

(*o*) *Bowen v. Hall* (1881), 6 Q. B. D. 333.

(*p*) *Hedley v. Pinkney*, [1892] 1 Q. B.

58. See *R. v. Callahan* (1837), 8 C. & P. 154 (Callahan appointed by vestrymen of the parish; rightly described as servant of committee of management); *R. v. Jenson* (1835), 1 Mood. 434 (clerk elected by managers of savings' bank; rightly described as clerk to the trustees). See also *Stone v. Cartwright* (1795), 6 T. R. 411; *R. v. Hoscason* (1811), 14 East, 605. See *Begg v. Pearse* (1851), 10 C. B. 534, as to public officers appointed under Acts of Parliament, and to be paid out of rates.

paid by and act under the captain of the vessel. He or his men will not necessarily be the servants of the captain or the owner (*pp*). The relation may exist between two persons, both of whom perform manual work (*q*); and a man may be the servant of another, though his remuneration may not be called wages, but profit or commission (*r*). He may be a servant, though he performs no manual work, though he is a *contre-maitre* or *chef d'ouvriers*. "Master" is used in different senses. But if all these elements, viz. :—

- (a) Power to appoint; (b) power to dismiss; (c) liability to pay wages;

be present clearly in operation, and there be no question of agency, that is conclusive.

In the case of actions of seduction, the common tests of the relationship fail. By a legal fiction, the relation of master and servant is sometimes said to exist between parent and child, when, in any but a very vague sense, the former is not a master, and the latter is not a servant (*s*).

Employers may contract with workmen as if they were employers; or two or more employers with their workmen may combine for the performance of a certain work or undertaking; and in carrying out these combined efforts a workman may be, at one moment, under the control of A., at another of B. This concurrence or combination may be temporary, it may be simultaneous or consecutive. The early economists investigated the "division of labour," that is, the employment of various workmen belonging to one concern under the control of one employer in carrying out one object. Modern industry exhibits more and more instances of the concurrence or combination of labourers employed in several concerns, it may be by several employers, with a common object (*t*).

(*pp*) *Cameron v. Nystrom*, [1893] A. C. 308.

(*q*) *Ashworth v. Samsir* (1861), 3 E. & F. 701; *Mellors v. Shaw* (1861), 1 B. & S. 437.

(*r*) See *Reg. v. McDonald* (1861), L. & C. 85 (defendant paid partly by salary and partly by a percentage on profits; a servant within 7 & 8 Geo. IV. c. 29,

s. 47). See *Reg. v. White* (1839), 8 C. & P. 742, as to servant paid by gratuities.

(*s*) Chapter XIX.

(*t*) *Budgett v. Binnington* (1890), 25 Q. B. D. 320, well illustrates this complexity in modern industry. A grain vessel was unloaded by A., the consignees, and B., the ship-owners. A.'s

There may be combination or collective employment with or without common control; and the control may be limited or complete. This state of things has given rise to several questions, of which the two most important are:—(1) For the neglect or omission of what workmen are employers liable? and (2) What workmen are “fellow-workmen” within the rule stated in Chapter XXVI.? In the cases is a tendency to extend the relation of master and servant far beyond what it originally included. The decisions treat workmen as “servants,” where no contract of master and servant in strictness exists, and where “agent” would have been a more accurate term.

The following are some examples of combination of labour:—

- (i) A servant is “lent,” and is, for the time, entirely under the control of the borrower:—the state of things in *Wild v. Waygood* (u). In *Donoran v. Laing*, &c. (x), the defendants “lent” a workman to a master stevedore to work a crane, which belonged to the defendants. Though paid by the defendants and in what is called their “general employment,” the workman was at the time of his negligent act entirely under the control of the stevedore. *Held*, that the defendants were not liable.
- (ii) The owner parts with the possession of property on which his servants are engaged, and ceases to control them. The commonest case of this character is the chartering of a ship. It is clear that, if the owner parts entirely with the control of the vessel, the master and officers cease to be his servants, so far, at any rate, as regards liability for their acts, *e.g.*, for their contracts or torts; and it matters not whether the person dealing with the ship had notice of the charter (y).

“No doubt, when a shipowner who enters into a charter-party without parting with the possession and control of his ship, seeks

work was undertaken by the British Dock Company, C., who employed a firm of stevedores, D.; while B. employed another firm, E. The “bushellers” who put the grain into the sacks were employed by A.; the “winchmen” by B.; the “weighers” by A.; the “tallyman” by A. and B.; the “leaders” by A.; the “foreman” by B.

(u) [1892] 1 Q. B. 783. See *Rourke*

v. White Moss Colliery Co. (1876), 1 C. P. D. 556; 2 C. P. D. 205.

(x) [1893] 1 Q. B. 629.

(y) *Barrowall Manufactur von Carl Scheibler v. Furness*, [1893] A. C. 8. The proposition stated in the text seems to have been doubted as late as 1826: see *Laugher v. Pointer*, 5 B. & C. at p. 556.

to limit the powers assigned by law to his captain, the limitation will be altogether ineffectual in any question with shippers who are ignorant of the terms of the instrument. . . . But I know of no principle or authority, which requires that notice must be given, when an owner parts, even temporarily, with the possession and control of his ship in order to prevent the servant of the charterer from pledging his credit" (z).

To make the captain and crew cease to be the agents of the shipowners and to become the agents of the charterers, the shipowner must have divested himself of all control (a); in the absence of this he will be liable to third parties, even if he has stipulated, as between himself and the charterers, that they are to be liable (b).

- (iii) In another class of cases A. hires the property of B.; B.'s servant controls that property, and B. retains the control of his servant. This was the state of facts proved in *Laugher v. Pointer* (c), *Quarman v. Burnett* (d), and *Jones v. Corporation of Liverpool* (e). In the first of these cases the owner of a carriage hired from a livery-stable keeper for the day a pair of horses and a driver. The horses belonged to the livery-stable keeper in whose employment the driver was. The plaintiff having been injured in consequence of the negligence of the driver, the question arose whether the hirer, who was the owner of the carriage, was liable. Two judges, Bayley, J., and Holroyd, J., were of opinion that he was liable. Two judges, Abbott, C. J., and Littledale, J., took the opposite view. The point was finally decided in *Quarman v. Burnett* (d), the facts of which were these: The owners of a carriage, who were in the habit of hiring horses from the same person for a day or for a drive, always had the same driver, gave him a fixed gratuity, and provided him with a livery, which he kept in the hirers' hall. While he was hanging up the livery, he left the horses unattended. An accident happened, and the plaintiff was injured. The Court of Exchequer adopted

(z) *Baumwoll v. Furness*, 1 c., per Lord Watson, at p. 21. See *Baumwoll, &c. v. Gilchrist*, [1892] 1 Q. B., per Esher, M. R., at pp. 258-9.

(a) *Colev v. Newbery* (1830), 7 Bing. 190; *Baumwoll v. Furness*, 1 c.

(b) *Manchester Trust v. Furness*, [1895] 2 Q. B. 539.

(c) (1826), 5 B. & C. 547.

(d) (1840), 6 M. & W. 499. See *Smith v. Lawrence* (1828), 2 M. & R. 1; *Brady v. Giles* (1835), 1 M. & Rob. 494.

(e) (1885), 14 Q. B. D. 890.

the view of Abbott, C. J., and Littledale, J. In delivering the judgment of the Court, Baron Parke said :—

It is undoubtedly true that there may be special circumstances, which may render the hirer of job horses and servants responsible for the neglect of a servant, though not liable by virtue of the general relation of master. He may become so by his own conduct, as by taking the actual management of the horses, or ordering the servant to drive in a particular manner, which occasions the damage complained of, or to absent himself at one particular moment, and the like. As to the supposed choice of a particular servant, my brother Maule thought there was *some* evidence to go to the jury of the horses being under the defendants' care, in respect of their choosing this particular coachman. We feel a difficulty in saying that there was any evidence of choice, for the servant was the *only* regular coachman of the job-mistress's yard; when he was not at home, the defendants had occasionally been driven by another man, and it did not appear that at any time since they had their own carriage, the regular coachman was engaged, and they had refused to be driven by another; and the circumstance of their having a livery, for which he was measured, is at once explained by the fact, that he was the only servant of Miss Mortlock (the livery-stable keeper) ever likely to drive them. Without, however, pronouncing any opinion upon a point of so much nicety, and so little defined, as the question, whether there is *some* evidence to go to a jury, of any fact, it seems to us, that if the defendants had asked for this particular servant, amongst many, and refused to be driven by any other, they would not have been responsible for his acts and neglects. If the driver be the servant of a job-master, we do not think he ceases to be so by reason of the owner of the carriage preferring to be driven by that particular servant, where there is a choice amongst more, any more than a hack post-boy ceases to be the servant of an innkeeper, where a traveller has a particular preference of one over the rest, on account of his sobriety and carefulness. If, indeed, the defendants had insisted upon the horses being driven, not by one of the regular servants, but by a stranger to the job-master, appointed by themselves, it would have made all the difference. Nor do we think that there is any distinction in this case, occasioned by the fact that the coachman went into the house to leave his hat, and might therefore be considered as acting by their directions, and in their service. There is no evidence of any special order, in this case, or of any general order to do so at all times, *without having any one at the horses' heads*. If there had been any evidence of that kind, the defendants might have been well considered as having taken the care of the horses upon themselves in the meantime. Besides these two circumstances, the fact of the coachman wearing the defendants' livery with their consent, whereby they were the means of inducing third persons to believe that he was their servant, was mentioned in the course of the argument as a

ground of liability, but cannot affect our decision. If the defendants had told the plaintiff that he might sell goods to their livery servants, and had induced him to contract with the coachman, on the footing of his really being such servant, they would have been liable on such contract: but this representation can only conclude the defendants with respect to those who have altered their condition on the faith of its being true. In the present case, it is matter of evidence only of the man being their servant, which the fact at once answers. We are therefore compelled to decide upon the question left unsettled by the case of *Laugher v. Pointer*, in which the able judgments on both sides have, as is observed by Mr. Justice Story in his book on Agency, page 406, "exhausted the whole learning of the subject, and should on that account attentively be studied." We have considered them fully, and we think the weight of authority and legal principle is in favour of the view taken by Lord Tenterden and Mr. Justice Littledale. The immediate cause of the injury is the personal neglect of the coachman, in leaving the horses, which were at the time in his immediate care. The question of law is, whether anyone but the coachman is liable to the party injured; for the coachman certainly is. Upon the principle that *qui facit per alium facit per se*, the master is responsible for the acts of his servant; and that person is undoubtedly liable, who stood in the relation of master to the wrong-doer—he who had selected him as his servant, from the knowledge of or belief in his skill and care, and who could remove him for misconduct, and whose orders he was bound to receive and obey; and whether such servant has been appointed by the master directly, or intermediately through the intervention of an agent authorised by him to appoint servants for him, can make no difference. But the liability, by virtue of the principle of relation of master and servant, must cease where the relation itself ceases to exist: and no other person than the master of such servant can be liable, on the simple ground, that the servant is the servant of another, and his act the act of another; consequently, a third person entering into a contract with the master, which does not raise the relation of master and servant at all, is not thereby rendered liable; and to make such person liable, recourse must be had to a different and more extended principle, namely, that a person is liable not only for the acts of his own servant, but for any injury which arises by the act of another person, in carrying into execution that which that other person has contracted to do for his benefit. That, however, is too large a position, as Lord Chief Justice Eyre says, in the case of *Bush v. Steinman* (1 Bos. & Pull. 404), and cannot be maintained to its full extent without overturning some decisions, and producing consequences which would, as Lord Tenterden observes, "shock the common sense of all men:" not merely would the hirer of a post-chaise, hackney-coach, or wherry on the Thames, be liable for the acts of the owners of those vehicles, if they had the management of them, or their servants, if they were managed by servants, but the purchaser

of an article at a shop, which he had ordered the shopman to bring home for him, might be made responsible for an injury committed by the shopman's carelessness, whilst passing along the street. It is true, that there are cases—for instance, that of *Bush v. Steinhilber*, *Sly v. Edgley* (6 Esp. 6), and others, and perhaps amongst them may be classed the recent case of *Randleson v. Murray* (8 A. & E. 109)—in which the occupiers of land or buildings have been held responsible for acts of others than their servants, done upon, or near, or in respect of their property. But these cases are well distinguished by my brother Littledale, in his very able judgment in *Langher v. Pointer*. The rule of law may be, that where a man is in possession of fixed property, he must take care that his property is so used or managed, that other persons are not injured; and that, whether his property be managed by his own immediate servants, or by contractors with them, or their servants. Such injuries are in the nature of nuisances: but the same principle which applies to the personal occupation of land or houses by a man or his family, does not apply to personal movable chattels, which, in the ordinary conduct of the affairs of life, are intrusted to the care and management of others, who are not the servants of the owners, but who exercise employments on their own account with respect to the care and management of goods for any persons who choose to intrust them with them. It is unnecessary to repeat at length the reasons given by my brother Littledale for this distinction, which appear to us to be quite satisfactory; and the general proposition above referred to, upon which only can the defendants be liable for the acts of persons who are not their servants, seems to us to be untenable. We are, therefore, of opinion, that the defendants were not liable in this case, and the rule must be made absolute, to enter a verdict for the defendants on the second issue (*f*).

In *Jones v. Corporation of Liverpool* the defendants had hired a horse and driver to drive their water-cart. The defendants' inspector only pointed out the streets to be watered. On the authority of *Quarman v. Burnett*, the defendants were held not liable for the negligence of the driver (*g*).

(*f*) It has been held that the hirer of a horse and cab is liable under his contract of bailment for damage due to his own coachman's negligent driving, even though it be outside the scope of his employment: *Coupe Co. v. Maddick*, [1891] 2 Q. B. 413; now overruled by *Sanderson v. Collins* (C. A.), [1904] 1 K. B. 628. See as to liability of bailor, for his servant's acts or omissions, to

bailor, *Abraham v. Bullock* (1902), 86 L. T. 796; *Cheshire v. Bailey*, [1905] 1 K. B. 237. See p. 244, *infra*.

(*g*) The distinction suggested by Grove, J., in *Jones v. Corporation of Liverpool*, between the lending of a servant gratuitously and lending him for remuneration is overruled in *Dowran v. Laing, &c.*, [1893] 1 Q. B. 629. And see *Cameron v. Nystrom*, [1893] A. C.

In *Jones v. Scullard* (*h*) the defendant, who owned a brougham, horse, and harness, which he kept at a livery-stable, was in the habit of being driven by a servant of the livery-stable keeper. While the brougham was being drawn by the defendant's horse, the driver through his negligence lost control of the horse, which damaged the plaintiff's shop-window. The driver had been driving the brougham continuously for six weeks, and was wearing a suit of livery supplied by the defendant; but was imperfectly acquainted with the horse, which had been recently purchased. It was held on these facts by Russell, C. J., that there was evidence to go to the jury that the driver was acting at the time of the accident as the defendant's servant.

- (iv) *Sub-contracts* give rise to difficulties. The contractor may employ one set of men, the sub-contractor another; and yet for certain purposes both sets of men may be regarded as in the employment of the contractor. Suppose that A., an employer, contracts with B., another employer, for the performance of certain work by B.; A. exercising over B. or his workmen no control—the state of things proved in *Abraham v. Reynolds* (*i*). In this case A. was at common law (subject to certain exceptions) not liable for the acts of the servants of B. (*j*).

In some of the early cases of sub-contracts and joint operations there was a tendency to regard the servants of A. and B. as being in a common employment (*k*). The decision of the House of Lords in *Lindsay v. Johnson* (*l*) has put the law on that point on a proper basis. In that case H. contracted to build a block of artisans' dwellings in accordance with specifications, which provided for fire-proof roofs, &c. being supplied by L. The plaintiff, a workman paid by H., was injured by the negligence of a

308; *Hedley v. Pinkney, &c.*, [1894] A. C. 222; *Wallock v. Winfield*, [1901] 2 K. B. 596; *The Louise* (1902), 18 Times L. R. 19; *Milham v. Borough of Marylebone and Lutter* (1903), 67 J. P. 110. *Moore v. Palmer* (1886), 51 J. P. 196 (C. A.), as reported, seems quite irreconcilable with *Donovan v. Laing*. The facts of the two cases are identical; the decisions in direct conflict.

(*h*) [1898] 2 Q. B. 565; followed in *Dewar v. Tasker* (C. A.) (1907), 23 Times L. R. 259; and *Perkins v. Stead*, *Ibid.*

433. For the purposes of the Workmen's Compensation Act, 1906, the lender or letter-out of the servant is the employer: see sect. 13.

(*i*) (1860), 5 H. & N. 143.

(*j*) See Chap. XXIV. *infra*. For the purposes of the Workmen's Compensation Act, 1906, a sub-contractor's workmen are treated as in the employment of the "principal": sect. 4.

(*k*) See *Woodhead v. Gartness Imperial Co.* (1877), 4 Sc. Sess. Cas. (4th Ser.) 469.

(*l*) [1891] A. C. 371.

servant in the employment of L. The House of Lords held that the two servants were not in a common employment. Lord Herschell there says (p. 377) :—

Unless the person sought to be rendered liable for the negligence of his servant can show that the person so seeking to make him liable was himself in his service, the defence of common employment is not open to him.

Lord Watson puts the same point thus (p. 382) :—

I can well conceive that the general servant of A. might, by working towards a common end along with the servants of B., and submitting himself to the control and orders of B., become *pro hac vice* B.'s servant in such sense as not only to disable him from recovering from B. for injuries sustained through the fault of B.'s proper servants, but to exclude the liability of A. for injury occasioned by his fault to B.'s own workmen. In order to produce that result, the circumstances must, in my opinion, be such as to show conclusively that the servant submitted himself to the control of another person than his proper master, and either expressly or impliedly consented to accept that other person as his master for the purposes of the common employment.

- (v) There may be sub-contracts similar to the above, except that A. has under the contract certain rights of control over B. or B.'s workmen. Sometimes the rights of A. are so large that it is clear that the servants of B. are, for purposes of liability, servants of A.; sometimes the extent of the right of interference is such that it is doubtful whether the relation is that of master and servant. In *Hardaker v. Idle District Council* (m), where the contract required the contractor to pay attention to "any directions or instructions" of the inspector of the council, and empowered the inspector to dismiss men, Rigby, L. J., differing from Lindley and Smith, L. JJ., thought that the contractor and his men were in law the servants of the council. Again, there may be a power of dismissal of the contractor's servants without any real control (n). In *Penny v. Wimbledon Urban Council* (o) the defendants employed I, a contractor, to execute work according to the instructions of the defendants' surveyor. The defendants, as having control of the works, were held liable for the negligence of I.'s workmen.

(m) [1896] 1 Q. B. 335.

(n) See *Reedie v. London & North Western*

Rail. Co. (1849), 4 Ex. 244.

(o) [1898] 2 Q. B. 265.

From the cases are deducible two conclusions:—(1) That a servant X. of A. will be viewed as the servant of B., if B. exercises control over X. ; (2) that as between X. and the other servants of B., he will not be treated as a fellow-servant, unless there is a common master.

In the older cases determining liability, stress was laid on the question: Who selected the alleged servant? Now-a-days the decisive question is: Who *controlled* the servant? The test, however, is ambiguous: it may mean “who in fact controlled,” or “who had a right to control.” Sometimes the authorities use the test in one sense, sometimes in another. X., the general servant of A., is lent to B. ; A. paying his wages and retaining the right to dismiss him. So long as B. or his agent in fact gives orders to X., and X. agrees to obey them, B. is his master, and, apart from questions of common employment, is liable for X.’s wrongful acts. But if there is no privity between X. and B., in what sense is X. under B.’s control? Suppose that X., preferring to work in his own way, refuses to obey B.’s orders, can the latter be said to control the former? Control implies the right to give commands and to dismiss if they are not obeyed. B. can do nothing: he cannot dismiss X. or stop his wages; he can merely complain to A.

If a man lets out a carriage on hire to another, he in no sense places the coachman under the control of the hirer, except that the latter may indicate the destination to which he wishes to be driven. The coachman does not become the servant of the person he is driving, and if the coachman acts wrongly, the hirer can only complain to the owner of the carriage (*p*).

In the case in which these remarks were made (*p*), the hirers had no rights as to the servant except that of complaining; and yet they were held liable, doubtless on the ground that the hirers gave and the servant in fact obeyed orders. It is submitted that, if there is no control or right to control, the relation of master and servant does not exist; and liability, if it exist, must be based on other grounds. What are they?

In the absence of evidence of negligence on the part of B. or his servants, it is submitted that B. is in the position of the defendant in the carriage-hiring cases (*q*), viz., he is not liable,

(*p*) *Donovan v. Luing*, 45 Ch. [1893] 1 Q. B., per Bowen, L. J., at p. 631.

(*q*) *Laugher v. Pointer* (1826), 5 B. & C. 547; *Quorman v. Burnett* (1840), 6 M. & N. 499.

unless he has "actively interfered" with X., and has so become "the procurer of the wrongful act complained of" (v).

If there has been negligence on the part of B. or his servants, the test of liability is the same as in *Engelhart v. Farrant* (s); viz., was the negligence of B. or B.'s servants the "effective cause" of the damage? And that is a question of fact.

If A. lends to B. an incompetent servant, or a servant in charge of a machine which is defective owing to his own or his servant's negligence, A. will, possibly, be liable to any one injured thereby (t): though the nature of the defect, and the circumstances in which B. failed to detect it, might supply evidence of negligence, which would fix B., primarily at least, with liability (u).

One may be for some purposes a servant, and for others not. A *prima donna*, engaged to sing so many nights, would not be for all purposes a servant; obviously she would not, for example, be a "servant" within the meaning of sect. 68 of the Larceny Act, 1861; nor would she be bound to sing as the manager chose to direct. Yet she is so far regarded as a servant, that an action will lie for enticing her away from her employment (x).

To take another example of the same difficulty, a person may not have been properly appointed a servant of a banking or other company, and he could not fairly contend, as a regularly appointed servant could, that he was entitled to a certain notice before being discharged; but if he were suffered to act as cashier, manager, or otherwise, the company would not be permitted to disclaim responsibility for his acts (y).

Subsequently it will be pointed out that for some purposes a

(v) *Donovan v. Laing, &c.*, [1893] 1 Q. B., per Bowen, L. J., at p. 634. But is A. liable? X. was not, at the time of the wrongful act, engaged on A.'s work, save in a very indirect sense; nor was he under A.'s physical control. It would appear on authority that he is liable: see *Rex v. Irvinghoe*, 2 Botts. 293; *Chilcot v. Bromley* (1800), 12 Ves. 114; *Holmes v. Onion* (1857), 2 C. B. N. S. 790; *Waldock v. Winfield*, [1901] 2 K. B. 596. The latter case was decided on the special contract, but there are *dicta* to the effect that the presumption as to "control" is against the lender of the servant: "In every case in which a person has been held to be in control of a servant, who for general purposes was servant of some one else, there has been some fact or clause of an agreement which led to that conclusion"

(per Vaughan Williams, L. J., at p. 603).

(s) [1897] 1 Q. B. 240. In that case T., who did the wrongful act that caused the damage, was, for the purposes of that act, a stranger to the defendant.

(t) See *Donovan v. Laing, &c.*, [1893] 1 Q. B., per Esher, M. R., at p. 632.

(u) B. would probably have a right of action over against A.: see *Moubray v. Merryweather*, [1895] 1 Q. B. 857.

(x) *Lumley v. Gye* (1853), 2 E. & B. 216. Compare the remarks of Lord Westbury in *Knox v. Gye* (1872), L. R. 5 H. L. 675, as to a similar ambiguity in "trustee."

(y) *Bank of United States v. Dandridge*, 2 Wheaton, 64. See also *R. v. Beucall* (1824), 1 C. & P. 457; *Re County Assurance Co.* (1870), L. R. 5 Ch. 288; and Brice on *Ultra Vires*, 644.

volunteer is treated as a servant (*z*). In the chapters relating to masters' liabilities for the acts of servants, it will be seen that those who *de facto* perform work for another, though not under any agreement, will be treated as servants (*a*). This has long been recognised. "A wife, a friend, a relation, that use to transact business for a man," says Blackstone, "are *quoad hoc* his servants" (*a*). In other words, though the relation of master and servant does not strictly exist, they may bind him as his agents within the scope of their authority.

A third person engaged by a servant to act in his master's business in circumstances of necessity may make that servant's master liable for his torts. But the necessity must be proved to establish the servant's authority to engage the third person (*b*); and there is much force in Lord Esher's contention (*c*) that the doctrine of authority by necessity is in English law confined to a few exceptional cases.

Services are frequently rendered in circumstances which leave it uncertain whether they are done in virtue of an implied contract or out of affection and gratitude. A person goes to stay with a relative and does work for him. A boy is taken into a household out of charity and assists his benefactor. A person does work for another, who has promised or is expected to leave him a legacy (*d*). It is not easy to say in such cases whether or not there was an implied contract of hiring and service. It matters not that no words on the subject passed; if the understanding be that one is to do work for another and subject to his orders, the relation of master and servant will exist. Often it is not easy to know whether the parties meant or understood what they did not in fact express, or expressed what they did not really mean. In the many cases which have arisen with respect to persons alleged to be "clerks or servants" within the meaning of sect. 68 of the Larceny Act, 1861, the difficulty has been chiefly one of fact;

(*z*) Page 289, *infra*; *Booth v. Mister* (1835), 7 C. & P. 66 (plaintiff's carriage injured by defendant's team; at time of injury the team driven not by servant of defendant, but by person to whom defendant had intrusted the reins: defendant liable). In *Marrow v. Flimby*, *ſc.*, [1898] 2 Q. B. 588, Rigby, L. J. (at p. 602) suggests that it is volunteers who are aimed at by the words "who . . . works under a contract with an employer," in sect. 10 of the Em-

ployers and Workmen Act, 1875: *Vaughan Williams, L. J.* (at p. 608), thinks they "were intended to cover the case of apprentices and butty-men who contract as representing the men."

(*a*) Com. 1, 418.

(*b*) *Gwilliam v. Twiss*, [1895] 2 Q. B. 84 (C. A.). See the remarks in the judgments in *Beard v. London General Omnibus Co.*, [1900] 2 Q. B. 530.

(*c*) *Gwilliam v. Twiss*, l. c., at p. 87.

(*d*) See Chap. IX.

the jury have been asked to say, from the whole circumstances connected with the employment, whether the prisoner was a servant. It has been decided that a person who is employed by more than one person may be "a clerk or servant" within the 24 & 25 Vict. c. 96, s. 68, and 7 & 8 Geo. IV. c. 29, s. 47. In *Regina v. Batty* (e), a clerk employed by A. to sell goods for him was convicted of embezzlement, though at the same time he was employed by other persons in other business; and in *Ree v. Carr* (f) it was also held that a traveller employed by several houses might be properly convicted of embezzlement.

How it is employed in any statute can be known only by studying the language and object of the enactment. Take, for example, the phrase "servant or other person" in the 32 & 33 Vict. c. 14, s. 11, and 41 Vict. c. 15, s. 13. Tenements occupied as a house for the purposes of trade only, or as a warehouse for the sole purpose of lodging goods, wares, or merchandise therein, or as a shop or counting-house, or being used as a shop or counting-house, are exempted from inhabited house duties, "although a servant or other person may dwell in such tenement, or part of a tenement, for the protection thereof." Every species of servant does not come within this exception. The object of the Legislature in creating it must be considered. It was not intended that under this section a counting-house or warehouse should be used also as a dwelling-house. The respondent in *Newens v. Neokes* (g) claimed exemption in respect of premises used for the purpose of his trade. A clerk in his employment at a salary of 150*l.* a year lived on the premises in order to take care of them; he and his wife, children, and servant occupied five rooms. The Court of Appeal thought that the clerk, though a servant, did not come within the Act. "It appears to me," said Lord Justice Thesiger, "that the Legislature, in using the term 'servant,' is using that term in the ordinary and popular sense of it; that is to say, not in the sense in which any clerk or manager is called the servant of his employer, or in the sense in which the judges might be said to be the servants of the Crown, but in the sense of the ordinary menial or domestic servant." Yet even in this case, Lord Justice Thesiger added, if the Commissioners had found as a fact that the clerk was a "servant or other person" within the Act, the Court would not have been

(e) (1812), 2 Mood. C. C. 257; *R. v. Leech* (1821), 3 Star. 70; and *Tilt's Case* (1861), 30 L. J. M. C. 142. See also remarks of Bayley, J., in *Laugher v.*

Painter (1826), 5 B. & C. 569, and in *Hardy v. Ryle* (1829), 9 B. & C. 603.

(f) (1811), R. & R. 198.

(g) (1880), 6 Q. B. D. 530.

justified in interfering with their decision. On the other hand, in *Rollie v. Hyde* (*h*), decided subsequently, the Court thought that the Income Tax Commissioners were justified in finding that a cashier with a salary of 200*l.* a year, who occupied a sitting-room and bedroom on the top storey of the respondent's warehouses and counting-houses, and who slept on the premises solely as caretaker and for their protection, was "a servant or other person" within 41 Vict. c. 15, s. 13, sub-s. (2).

(*h*) (1881), 6 Q. B. D. 673.

CHAPTER III.

MASTER AND SERVANT AND MASTER AND SLAVE.

THE relation of Master and Slave cannot legally be created in England; and no rights arising out of that relation can be here enforced (*a*).

The exact legal position of a slave in England was uncertain until the King's Bench, in 1772, in Lord Mansfield's time, decided *Sommersett's Case* (*b*). Holt, C. J. (*c*), and Lord Northington (*d*) had given expression to *dicta* hostile to the rights of the slave-owner; but there were decisions of a contrary character from 1677 (*e*) to the time of Lord Hardwicke's decision in *Pearne v. Lisle* (*f*), that a slave was as much property as any chattel. In 1729, Sir Philip Yorke, the Attorney-General, and Mr. Talbot, the Solicitor-General, gave it as their opinion that a slave, by coming from the West Indies to Great Britain or Ireland, did not become free; and in consequence of this opinion slaves were publicly sold in London, Bristol, and Liverpool (*g*). In the first edition of Blackstone's Commentaries, published in 1766, it is stated (vol. i. p. 425), that "whatever service the heathen negro owes to his American master by general, not by local law, the same, whatever it be, he is bound to render, when brought to England and made a Christian." The question in *Sommersett's Case* (*b*) arose on the return to a writ of *habeas corpus*, which stated that Sommersett was the negro slave of Charles

(*a*) See note (*k*).

(*b*) (1771—1772), 20 Howell's S. T. 1. See also *Knight v. Wedderburn* (1778), Morrison's *Dictionary of Decisions*, p. 11, 545 (hiring for life without wages held to be slavery). The English law Courts were long reluctant to decide the question: Wynne's *Law Tracts* (A.D. 1765), 27.

(*c*) *Smith v. Browne* (1705), 2 Salk. 666. But see *Forbes v. Cochran* (1824), 2 B. & C. 448; 2 St. Tr. N. S. 147.

(*d*) *Stanley v. Harvey* (1762), 2 Eden,

125: "As soon as a man sets foot on English ground he is free; a negro may maintain an action against his master for ill-usage, and may have a *habeas corpus* if restrained of his liberty."

(*e*) *Butts v. Penny* (1677), 2 Lev. 201; *Gelly v. Clives* (1694), Ld. Raymond, 147.

(*f*) (1749), 1 Ambler, 75.

(*g*) There were, it is said, 14,000 slaves in London when *Sommersett's Case* was decided: Burge, Com. i. 740.

Steuart, who had delivered him into the custody of Knowles, the captain of a ship lying in the Thames, in order to carry him to Jamaica, and there sell him as a slave. The Court decided that this was not a sufficient return. Slavery, said Lord Mansfield, "being an odious institution, could be introduced only by positive law. Whatever inconveniences, therefore, may follow from the decision, I cannot say this case is allowed or approved by the law of England, and therefore the black must be discharged." Speaking of this decision in *Ree v. Thames Dilton* (*h*), Lord Mansfield stated that the determinations went no further than that the master (Knowles) could not compel the slave to quit England. Lord Stowell in the *Slave Grace Case* (*i*) still further qualified the effect of the *Sommerset Case*. A slave had come to England with her master. Of her own accord she returned to the Island of Antigua, where slavery then existed. Lord Stowell decided that she had not become free by her temporary residence here, and that the owner's property in his slave had not been destroyed. "There is nothing that makes a liberation from slavery; he goes back to a place where slavery awaits him, and where experience has taught him slavery is not to be avoided" (*h*).

Slavery being illegal in this country, it has often been contended that contracts of hiring and service for life are in substance slavery, and as such should be regarded as null and void. In some countries the maxim *nemo potest locare opus in perpetuum* is strictly applied (*l*); but here a contract to serve for life is valid, provided

(*h*) (1785), 4 Doug. 301.

(*i*) (1827), 2 Hag. Ad. 94; 2 St. Tr. N. S. 273.

(*k*) The chief subsequent decisions are: *Madrazo v. Willes* (1820), 3 B. & Ald. 354; *Baron v. Deeman* (1848), 2 Ex. 167; *Santos v. Illidge* (1860), 8 C. B. N. S. 861. The effect of these decisions is thus stated by Cockburn, C. J., in his memorandum on the subject, to be found in the report of the *Royal Commission on Fugitive Slaves*, p. xxvii.: "These cases establish beyond controversy that the tribunals of this country recognise the right of property of the owner of the slave, so long as the slave is in the country by the law of which the owner's right is upheld, or in the possession of the owner in a ship of a nation in which slavery is lawful; and that if the property in the slave is interfered with by a British subject, to the injury of the owner, an action for damages will lie to the extent of the loss sustained." The *dictum* of Best, C. J.,

in *Forbes v. Cockrane* (1824), 2 B. & C. 468, that "no action founded upon a right arising out of slavery" could be maintained in English courts, must therefore be taken with reservation. The proposition at the head of this chapter must be read in the light of the above decisions.

(*l*) Information as to the provisions on this point in modern codes is collected in Cornill's *Louage de Services*, p. 42. *On ne peut engager ses services qu'à temps ou pour entreprise déterminée*: Art. 1780 of *Code Civil*. See M. Laurent's *Principes de Droit Civil Français*, 25, 542. *Si même le temps stipulé était tellement long qu'il pût équivaloir à une aliénation de la liberté, bien qu'il ne comprît pas la vie entière du locateur, les juges pourraient rompre un tel engagement*: Troplong's *Louage*, ii. 288. M. Laurent takes up the same position. So far, however, as his remarks do not relate to cases in which there is no consideration for the promise to serve for life, they would

it be not open to the objection of fraud or duress, and provided there be consideration for the promise. This was first decided in 1837 by the Court of Exchequer in *Wallis v. Day (m)*. The plaintiff sold his business as carrier to the defendants, and covenanted that he would henceforth during his life serve them as an assistant in the trade of carrier. The plaintiff's covenant to serve was held good.

A contract of hiring must not be made a cover for the reality of slavery. Thus English law will not recognise in a master a right to imprison his servant for disobedience to orders or any other offence, even if a servant agreed to such terms of service (*n*). It was, however, lawful for a convict to consent in writing to a term of imprisonment on obtaining pardon and commutation of his sentence by the Crown (*o*). The common law would not even recognise the validity of an agreement by certain workmen or masters to work or not according to the decision of a majority (*p*). It is said, however, that there is one distinct exception to the principle that purely servile incidents cannot be attached to a contract of hiring; a master may, it is said, chastise a hired servant (*q*). Notwithstanding *dicta* to be found to this effect, such

invalidate all contracts of hiring and service, whatever might be their duration. In *Allen v. Shene*, Morrison's *Dictionary of Decisions*, pp. 23, 9454, a contract to serve three terms of nineteen years was "reduced," as being in restraint of trade. As to other Scotch decisions, Campbell's edition of Fraser on *Master and Servant*, 3, 4.

(*m*) (1837), 2 M. & W. 273. In Viner's *Abridg., Master and Servant*, N. 5, xv. 323, it is stated that a contract to serve for life must be by deed. The reference given is 2 H. 4, 15. The action, however, in this case was not by the master against the servant upon a contract to serve for life, but an action of simple debt against executors by a servant to recover arrears of wages for services actually performed. Such an action was not then maintainable: 3 & 4 Will. IV. c. 42, s. 14. The case, too, turned on the Statute of Labourers. See also Blackstone (1st edit.), i. 424; Chitty on *Contracts* (13th edit.), 521, 526; and the notes on *Peter v. Compton*, 1 Sm. L. C. (11th edit.), at p. 316.

(*n*) *Clarke v. Gape* (1596), 5 Reports, 129. It turns on the doctrine of *Magna Charta*, c. 9, *Nullus liber homo inprisonetur*. See *Foster v. Jackson* (temp. Charles II.), Hob. 61; and the protest of Ellenborough, C. J., in *Rex v. Stow-*

market (1808), 9 East, 211, against the idea that a parish apprentice could be transferred as if a parish slave. And see *Year Books*, 38 Hen. VI. 13.

(*o*) See Forsyth, *Constit. Law*, p. 462, n.; *Leonard Watson's Case* (1839), 9 A. & E. 783.

(*p*) *Hilton v. Eckersley* (1856), 6 E. & B. 47.

(*q*) Bacon's *Abridgment, Master and Servant*, N. It is clear that Hale (*History of Pleas of the Crown*, 453) and Hawkins (*Pleas of the Crown*, i. 85) understood that such a power existed. See also Foster's *Criminal Law*, 262; and 3 Salk. 47. Such, too, seems to have been Holt, C. J.'s, ruling in *Keat's Case*, which was a case of master and servant; Skinner (1697), 668. Blackstone, i. c. 14, only goes so far as to say that "if the master or master's wife beat any other servant of full age, it is good cause of departure." In an anonymous case of the 28th and 29th Charles II., it was held a good answer to an action for assault and battery of one servant by another that the latter was ordered to bring the plaintiff from a conventicle. The Chief Justice and Scroggs, J., were of opinion that "a man may as well send for his servant from a conventicle as an ale-house, and may keep him from going to

a right would not now be admitted. The authorities in favour of the doctrine are old. Some of them referred to the relation of lord and vassal; such a right does not flow from the contract of hiring and service as now understood; modern usage is wholly against the existence of so dangerous a power; and there are *dicta*—in *Winstone v. Linn* (*x*), for example—against it. It may be taken to be law that the beating of a servant would be good ground for departure and for an action for assault. The *dicta* to the contrary are to be ranked with “such quaint and “absurd *dicta* as are to be found in the books as to the right of a “husband over his wife in respect of personal chastisement, not “now capable of being cited as authorities in a court of justice in “this or any civilized country” (*s*). On the other hand, a master may chastise his apprentice for negligence or disobedience, provided it be done moderately (*t*). The apprentice is placed with the master to be instructed; and as he cannot be dismissed for misconduct, which may be done in the case of a servant, and as the master stands *in loco parentis*, it is deemed expedient to permit him to chastise an apprentice; or, to use a common phrase, the authority of the parent is delegated to the master. That authority being itself delegated, the master may not delegate it to anyone else (*u*). It would appear from an old authority (*x*) that a master may not use violence in order to force an apprentice or servant to return to

either of those places.” In a learned anonymous work published in 1767, entitled “*Laws concerning Masters and Servants*,” p. 126, the existence of the right of correcting servants is recognised; and the same is true of Bird’s *Law of Master and Servant* (1801), p. 5. On the other hand, there is a passage in Fitzherbert, *De N. B.* 168, to the effect that battery by the master is a good cause of departure. See also Hawkins, P. C. i. 183. Kent in his *Commentaries*, ii. 261, says the right of chastising “may safely be confined to apprentices and menial servants while under age, for then the master is to be considered *in loco parentis*.” In *Reg. v. Huntley* (1852), 3 C. & K. 142, it was ruled by Platt B., that one servant, even an upper servant, had no right to chastise another servant. See also *Latter v. Braddell* (1880), 50 L. J. Q. B. 448.

(*v*) Holroyd, J. (1823), 1 B. & C. 469. The tendency of modern legislation on the subject may be collected from such statutes as 24 & 25 Vict. c. 100, s. 26, and 38 & 39 Vict. c. 86, s. 6.

(*s*) *Reg. v. Jackson*, [1891] 1 Q. B.

671, per Halsbury, C., at p. 679. A great master of the common law, charging a grand jury at Calcutta as to what in his view was, in 1785, the English law, said: “A master may legally correct his servant with moderation, and with a view to his amendment; nor, if the servant thus corrected should die by some misfortune unforeseen and unlikely to happen, would the master be guilty of any crime; but if the correction be immoderate, excessive, unreasonable, cruel, the party may, if he live, have reparation in damages; or, if he die, the master will be guilty of manslaughter or murder according to the circumstances.” Sir William Jones’s Works, 7, 9.

(*t*) Chitty’s Gen. Prac. vol. i. 70a; *Gilbert v. Fletcher*, Cro. Car. 179; *Penn v. Ward* (1835), 2 C. M. & R. 338; *Combes’s Case* (1613), 5 Rep. Pt. 9, 76a; *Walter v. Everard*, [1891] 2 Q. B. at p. 376.

(*u*) *Combes’s Case*, 5 Rep. Pt. 9, 75b. And see *Cleary v. Booth*, [1893] 1 Q. B. 165 (authority to chastise a schoolboy).

(*x*) *Dalton*, c. 121, p. 283. See Austin on *Apprentices*, p. 67.

his service. Reasonable apprehension of grievous bodily harm at the hands of his master will justify an apprentice in leaving his service^(y). Another exception is said to exist in the case of a master of a ship; though a master being himself a servant, this is no exception to the rule that the master may not chastise his servant. Having authority to do what is necessary for the safety of the ship and those on board, he may imprison a seaman or inflict reasonable and moderate chastisement for disobedience to lawful commands, insubordination or mutinous, riotous or insolent conduct^(z). The power may be exercised not merely when the ship is at sea and beyond the reach of assistance^(a). No particular mode or instrument of punishment is prescribed; it will depend on the circumstances of the case and the gravity of the offence how the culprit should be punished. But the punishment must be applied with due moderation; and should a captain inflict upon a seaman immoderate and unreasonable punishment, he will become a trespasser^(b), and will be liable to an action. Due inquiry should be made before punishment is inflicted^(c). It is the duty of the master to cause a clear statement of all offences committed, the inquiry and the punishments inflicted, to be inserted in the official log.

(y) *Halliwell v. Cownsell* (1878), 38 L. T. (N. S.) 176.

(z) *Rhodes v. Leach* (1819), 2 Stark. 516; *Aguincourt* (1824), 1 Hag. 271, 273; *Lothar Castle* (1824), *ibid.* 384; *Hannaford v. Humm* (1825), 2 C. & P. 148, which shows that the verdict of a court martial would not be conclusive evidence of the truth of a master's charges against a seaman.

(a) *Lamb v. Burnett* (1831), 1 Cr. & J. 291 (action for assaulting seamen on board ship at anchor within two miles of Macao, and within hail of several vessels; held that the mutinous conduct of the plaintiff was a good justification). Bayley, J., uses language which seems to imply that this power exists anywhere; but query if the vessel was in the Thames or in any English port,

within waters in which the ordinary criminal law prevailed. It is submitted that the exceptional remedy exists only where the necessity exists. *Enchantress* (1825), 1 Hag. Ad. 395. *The Lima* (1837), 3 Hag. 346, as to use of force to prevent mutiny.

(b) *Watson v. Christie* (1800), 2 B. & P. 224; Macdachlan's *Law of Merchant Shipping*, 4th ed. p. 209. As to punishments of seamen for offences against discipline at sea, 57 & 58 Vict. c. 60, s. 225.

(c) 57 & 58 Vict. c. 60, s. 228. As to duty of instituting inquiry, *Murray v. Montrie* (1834), 6 C. & P. 471. See as to punishments of sailors, sects. 114 and 376—384 of the Merchant Shipping Act, 1894.

CHAPTER IV.

HIRING AND SERVICE AND SIMILAR CONTRACTS.

THE relation of master and servant may be further explained by distinguishing it from other legal relations which it approaches, and with which it is often confounded.

Servant and Agent.

A servant is for certain purposes, and in certain circumstances, hereafter stated, the agent of his master (*a*). He is authorised, in many cases, to pledge the credit of his master, and we shall find, so far as torts are concerned, that he is treated as the agent of the master, even for acts which the latter has prohibited, and that the master is held responsible for the acts of his servant done in the course of his employment. Sometimes the terms agent and servant are used, especially in the Courts of the United States, as if interchangeable (*b*). It is, however, for certain purposes, necessary to distinguish them. "A principal has the right," said Bramwell, B., in *R. v. Walker* (*c*), "to direct what the agent has to do; a master has not only that right, but also the right to say how it is to be done." The question most frequently arises with reference to the meaning of "clerk or servant" in the 68th section of 24 & 25 Vict. c. 96. The Courts have looked not so much to the form of remuneration, whether by "commission" or "wages," as to the question whether the alleged "clerk or servant" was free to carry out the object of the employment in the manner which seemed good to him. In *R. v. Bowers* (*d*) the prisoner, who was

(*a*) Chap. XXIV.

(*b*) "The two terms, 'master and servant,' and 'principal and agent,' are frequently interchanged, as though identical in meaning, and, indeed, one is usually quite as exact as the other;" Schouler on *Domestic Relations*, 611.

He speaks of the term "servant" as offensive: p. 600.

(*c*) (1858), 27 L. J. M. C. 207.

(*d*) (1866), 1 C. C. R. 41; see *R. v. Negus* (1873), 2 C. C. R. 34, and the cases mentioned in note (*i*), Chap. II. p. 10.

employed to collect orders for coals, was at liberty to get orders and receive the money as he "thought fit." Erle, C. J., said :—

A person who is employed to get orders and receive money, but who is at liberty to get those orders and receive that money where and when he thinks proper, is not a clerk or servant within the meaning of the statute. The construction of the documents decides this case. Under the first agreement the prisoner was a servant; but under the second he was at liberty to dispose of his time in the way he thought best, and to get or abstain from getting orders on any particular day as he might choose; and this state of things is inconsistent with the relation of master and servant.

It is essential that the subject-matter and scope of each Act in which "servant" or "agent" is found should be carefully considered in order to determine whether the former is convertible with or included under the latter. The facts in *Laub v. Attenborough (c)* showed that a clerk of a wine merchant was authorized by his master to sign delivery orders in his master's name, and to receive dock warrants in his own, and that he was also authorized to pledge the warrants for the purposes of his master's business. In many respects obviously this servant was the agent of his master; but the Court of Queen's Bench decided that he was not an agent within the former Factors Acts (6 Geo. IV. c. 94, and 5 & 6 Vict. c. 39), and that his master was entitled to recover dock warrants which he had fraudulently pledged with a pawnbroker as security for money lent to him (*f*).

Servant and Bailee.

Sometimes a bailee is loosely spoken of as a servant. Thus in *Ward v. Macauley (g)* it is said "the carrier is considered in law as the servant of the owner, and the possession of the servant is the possession of the master." The two relations, however, are distinct, and it is frequently highly important, especially in questions of criminal law, to distinguish them. In its more limited significance bailment is, as defined by Story, J., "a delivery of a thing in trust for some special object or purpose, and upon a contract, express or implied, to conform to the object or purpose of the trust" (*h*). One technical distinction leading to important practical

(*e*) (1862), 1 B. & S. 831; see *Hastings v. Pearson*, [1893] 1 Q. B. 62.

(*f*) See distinctions between servant and agent stated in Wharton on *Agency*, s. 20. Some of them appear fanciful.

(*g*) (1791), 4 T. R. 489. And see per Grose, J., in *Gordon v. Harper* (1796), 7 T. R. at p. 12.

(*h*) Story on *Bailment*, s. 2.

results must be recognised. At common law a bailee, unlike a servant, is understood to have *possession* of property in his charge. One consequence is that a bailee, while not liable to an action for trover or trespass, can himself sue in trespass (*i*), while a servant, as such, cannot (*k*). Another consequence was that a bailee could not be guilty of larceny, inasmuch as there could not be a conversion, or in other words a wrongful change of possession (*l*). This has now been altered by 24 & 25 Vict. c. 96, s. 3, which enacts:—

Whosoever, being a bailee of any chattel, money, or valuable security, shall fraudulently take or convert the same to his own use or the use of any person other than the owner thereof, although he shall not break bulk or otherwise determine the bailment, shall be guilty of larceny (*m*), and may be convicted thereof upon an indictment for larceny; but this section shall not extend to any offence punishable on summary conviction.

Where a drover was employed on a single occasion to take pigs to L., and deliver them to G., and to bring back whatever money he received from G., the drover being paid by the day, but being at liberty to drive the cattle of any other person, he was held not to be a servant, but a bailee, and consequently incapable of committing larceny, unless he had intended at the time of receiving the pigs to appropriate them to his own use (*n*).

The question of possession arises as to chattels found by a servant. In the case of a servant, as in the case of other persons, the test is:—Had the finder a reasonable belief that the owner could be found? As to this, the place, time, and general circumstances of the finding are material; and in drawing conclusions from such evidence certain presumptions must be regarded. A water company brought an action in detinue to recover possession of two gold rings, which the defendant had found in the mud at the bottom of a pool. The plaintiffs were the owners in fee simple of the land covered by the pool, and had

(*i*) *Gordon v. Harper* (1796), 7 T. R. 9; *Tancerd v. Allgood* (1859), 4 H. & N. 438; *Mears v. L. & S. W. Rail. Co.* (1862), 11 C. B. N. S. 850. *Scumble*, he can also sue in trover by virtue of his special property and his right to possession combined: see *Fowler v. Down* (1797), 1 B. & P., per Eyre, C. J., at p. 47.

(*k*) But see *Moore v. Robinson* (1831), B. & Ad. 817. See Pollock & Wright on *Possession* (1888 edit.), p. 59.

(*l*) Roscoe, *Criminal Evidence* (13th edit.), 533. The rule did not apply to possession acquired by trespass or fraud:

R. v. Riley (1853), 22 L. J. M. C. 48.

(*m*) It is pointed out in Russell on *Crimes* (6th edit.), ii. 326, that “the distinction between a servant and bailee is still material; for although in all such cases as the preceding one (*R. v. Hey*, 1 Den. C. C. 602) the drover would now be punishable under the 24 & 25 Vict. c. 96, s. 3, yet he would only be punishable as for a simple larceny, whereas a servant is much more severely punishable under sect. 67.”

(*n*) *R. v. Goodbody* (1838), 8 C. & P. 665; *R. v. Hey* (1849), 1 Den. C. C. R. 602; *R. v. Cooke* (1871), 1 C. C. R. 295.

engaged the defendant to clean it out. Lord Russell, C.J., thus states the law :—

The general principle seems to me to be that where a person has possession of house or land, with a manifest intention to exercise control over it, and the things which may be upon or in it, then, if something is found on that land, whether by an employee of the owner or by a stranger, the presumption is that the possession of that thing is in the owner of the *locus in quo* (o).

So where a servant picked up some bank-notes in her master's house, and appropriated them without inquiry, she was convicted of theft (p). On the other hand, where notes had been dropped in the public part of a shop, the finder was held entitled to them as against the shopkeeper (q).

The distinction also meets one in considering the responsibility of a master for the negligence or tortious acts of a servant. It has arisen chiefly in actions brought against the owners of cabs for the negligence of drivers, the plaintiff alleging that the latter are servants of the owner; the defendants contending that the drivers are bailees. The point was first considered in *Morley v. Dunscombe* (r), and the Court there thought that the driver was a servant remunerated in a peculiar way. In *Fowler v. Lock* (s), a cabdriver received from a cab proprietor a cab and horse on condition that at the end of the day he should hand over 18s., he retaining for himself the balance of the day's earnings; the horse's food to be supplied by the owner; and the owner to have no control over the driver after he left the yard. The horse which the cab proprietor gave was fresh from the country; it had never before been harnessed to a cab; and it ran away and injured the driver. The jury found that the horse was not reasonably fit to be driven in a cab. Byles, J., and Grove, J., were of opinion that the relation between the proprietor and driver was that of bailor and bailee, and that the driver might recover in an action against the proprietor. Willes, J., on the other hand, thought that the relation was that of master and servant, or that of co-adventurers, and that in the absence of proof of personal negligence or misconduct

(o) *South Staffordshire Water Co. v. Sharman*, [1896] 2 Q. B. 44.

(p) *Reg. v. Kerr* (1837), 8 C. & P. 176.

(q) *Bridges v. Harkesworth* (1851), 21 L. J. Q. B. 75. In an American case it was held that there was no presumption that money found in a public room in a hotel belonged to a guest, so as to entitle the landlord to the custody of it as against the servant who found it:

Hamaker v. Blanchard, 90 Penn. St. Rep. 377. But, it is submitted, this is not the law in England. Of course a servant, or anyone else, who finds a chattel has a good legal title against a mere wrong-doer: *Armory v. Delamirie*, 1 Sm. L. C. 356; *Matheus v. Harsell* (1850), 1 E. D. Smith (N. Y.), 393.

(r) (1848), 11 L. T. 199.

(s) (1872), L. R. 7 C. P. 272.

on the part of the former, the latter could not recover (*f*). But it is now settled law that, so far as the public are concerned, a cab-driver to whom a cab is let on the terms above stated, is to be regarded as a servant, and that the cab proprietor will be answerable for his negligence to third persons who are injured by the former (*u*). This conclusion was deduced from the language of the Metropolitan Hackney Carriage Acts (1 & 2 Will. IV. c. 22, 6 & 7 Vict. c. 86, and 32 & 33 Vict. c. 115). Registration under the Acts as licensed proprietor is not a condition of liability (*x*).

Sale and Contracts of Service.

The points of resemblance between sale and certain contracts of work and labour or hiring and service are considerable. They attracted the attention of the Roman jurists, and several passages in Gaius, the Institutes, and the Digest deal with them. In the Institutes the following case is put to clear up the difficulty which arises when materials as well as labour are supplied by the artificer: "Suppose Titius agrees with a goldsmith that the latter shall make with his own gold rings of a specified weight and size for ten *aurei*, is the contract one of sale or hire? Cassius says that there is a contract of sale of the materials and of hiring of the work; but it has been decided that it is only a case of sale. If Titius had given his own gold, and a price had been fixed for the work, of course the contract must have been *locatio conductio*" (*y*). The test, in short, was, Who furnished the material? If the workman did so, then the contract was one of sale; if the employer, the contract was one of hiring and service. This test, however, did not apply to cases in which the employer furnished one and the workman another part of the material; there the rule was *accessorium sequitur principale* (*z*). Nor was the test strictly applied in other cases; *e.g.*, an architect, who agreed to erect a building, and find the materials, was said to have entered into a

(*f*) The opinion of Byles and Grove, JJ., was not dissented from in *King v. London Improved Cab Co.* (1889), 23 Q. B. D. 281; and see the remarks of Vaughan Williams, L. J., in *Gates v. Bill*, [1902] 2 K. B. at p. 41.

(*u*) *Powles v. Hider* (1856), 6 E. & B. 207; *Fenables v. Smith* (1877), 2 Q. B. D. 279; *King v. London Improved Cab Co.* (1889), 23 Q. B. D. 281; *Keen v. Henry*, [1894] 1 Q. B. 292 (where

King v. Spurr, 8 Q. B. D. 104, was held overruled by *King v. London Improved*, &c., *ubi sup.*); *Gates v. Bill*, [1902] 2 K. B. 38.

(*x*) *Gates v. Bill*, [1902] 2 K. B. 38.

(*y*) iii. tit. 24, s. 4; Gaius, iii. 146; Dig. 19, 2, 2; Vangerow, *Lehrbuch der Pandekten*, s. 632; Laurent, 26th vol. p. 7; Pothier, *Louage*, 1, c. 1.

(*z*) Story on *Bailment*, 247; Domat, 1, tit. 4, s. 7.

contract of hiring and letting, because he did not sell the soil on which the house stood, and to which it was an accessory (*a*).

The question possesses importance in English law for several reasons. The 4th section of the Sale of Goods Act, 1893, provides that :—

(1) A contract for the sale of any goods of the value of ten pounds or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf (*b*).

(2) The provisions of this section apply to every such contract, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery (*c*).

In consequence of these enactments, it is often necessary to ascertain whether a contract is for the sale of goods or for work and labour. The question has been the subject of much controversy. In *Atkinson v. Bell* (*d*), it was held that a contract for the manufacture and delivery of a machine was within the statute. In *Lee v. Griffin* (*e*), which was an action by a dentist to recover the price of two sets of teeth, the correctness of the decision in *Atkinson v. Bell* was affirmed; and the true criterion was thus stated by Blackburn, J. :—

If the contract be such that, when carried out, it would result in the sale of a chattel, the party cannot sue for work and labour; but, if the result of the contract is that the party has done work and labour which ends in nothing that can become the subject of a sale, the party cannot sue for goods sold and delivered.

This criterion would place among contracts for work and labour such contracts as those in *Clark v. Mumford* (*f*) (a farrier employed professionally and supplying medicine), and in *Grafton v. Armitage* (*g*) (a machinist employed by an inventor to make experiments, the former furnishing the materials), and contracts for making chattels and fixing them to the freehold (*h*).

(*a*) Domat, tit. 4, s. 7.

(*b*) A re-enactment, with slight alterations, of sect. 17 of the Statute of Frauds, which is repealed by the Act cited.

(*c*) A reproduction of sect. 7 of Lord Tenterden's Act (9 Geo. IV. c. 14).

(*d*) (1828), 8 B. & C. 277.

(*e*) (1861), 1 B. & S. 272.

(*f*) (1811), 3 Camp. 37.

(*g*) (1845), 2 C. B. 336.

(*h*) In Benjamin on *Sale*, 5th ed. p. 158, the rule is thus stated: "If the contract is intended to result in trans-

Servant and Contractor.

The distinction between servant and contractor is, in theory, clear. It is recognised in many cases, and important consequences hang upon it (*i*). Speaking generally, it may be said that if a person who is employed to execute work exercises an independent employment, and is not subject to control—if, *e.g.*, a tradesman is called in by a householder to do a certain job in the way which seems best to the former—he is a contractor, not a servant. Probably the distinction cannot be put more clearly than it was by Brett, L. J., in explaining the law to the Select Committee on Employers' Liability:—

If you were to contract with a person that he and his servants should do all your work in the way you should direct his servants to do it, they are your servants; that is only a different mode of paying them; but if you contract that he and his servants should do the work in the way he thinks best, then he is a contractor (*k*).

Clear though the distinction appears, it is often, in practice, drawn with difficulty; especially if the person giving out the work reserves to himself a right of directing or dismissing the servants of him who does the work (*l*).

In *Hardaker v. Idle District Council* (*m*), the defendants contracted with T. that he should construct a sewer for them. By the

ferring for a price from B. to A. a chattel in which A. had no previous property, it is a contract for the sale of a chattel." A similar question arose as to the words "living by buying and selling" in 21 James I. c. 19, s. 2, and 6 Geo. IV. c. 16, s. 2. Under these statutes the Courts held that a man who sold stones from a quarry on his own estate, or bought a coal mine, and worked it, and sold the coals, did not come within the above words; *Montagu and Gregg's Bankrupt Laws*, p. 8.

(*i*) See *Rapson v. Cubitt* (1842), 9 M. & W. 710; *Reedie v. L. & N. W. Rail. Co.* (1849), 4 Ex. 241; *Overton v. Freeman* (1852), 11 C. B. 867; *Peachey v. Rowland* (1853), 13 C. B. 182; *Dixon v. London Small Arms Co.* (1876), 1 A. C. 632; *Cameron v. Nystrom*, [1893] A. C. 308; *Hardaker v. Idle District Council*, [1896] 1 Q. B. 335. And see pp. 249 *et seq.*, *infra*.

(*k*) 1877, vol. x. p. 123.

(*l*) Wood (*Master and Servant*, p. 601) thus distinguishes the two relations: "When a person lets out work to another to be done by him, such person to furnish the labour, and the contractee reserving no control over the work or workmen, the relation of contractor and contractee exists, and not that of master and servant." *Gilbert v. Halpin*, 3 Ir. Jur. (N. S.) 300. (Action against secretary of commissioners to improve Wicklow harbour, for placing certain piles not lighted; defence that the defendants had committed the execution of the work to a certain contractor; held a good defence.) And see *Sadler v. Henlock* (1855), 4 E. & B. 570; *Sprout v. Hemmingsway*, 14 Pick. 1.

(*m*) [1896] 1 Q. B. 335. The facts in *Reedie v. L. & N. W. Rail. Co.* (1849), 4 Ex. 244, and *Steel v. S. E. Rail. Co.* (1855), 16 C. B. 550, it is submitted, fall far short of this case. See *Robertson v. Russell* (1885), 12 Sc. Sess. Ca. (4th ser.) 634.

contract, the defendants' inspector might, from time to time, give directions, to which special attention was to be paid by T.; the inspector's opinion, in case of a dispute as to anything connected with the works, was to be final; the inspector might discharge any foreman or workman for disobedience or incompetence, and he had to approve of any one engaged in their place; he might vary or modify the work or the materials used in any way he pleased, his opinion as to the effects of such variation upon the price being final. He also had the power of ordering certain measures to be taken to protect water or gas-pipes. Owing to T.'s negligence, there was an explosion of gas, which injured the plaintiff. Lindley, L. J. (p. 343) thought T. was not the servant of the defendants: "It is not proved that the inspector gave orders which led to the mischief." A. L. Smith, L. J. said (p. 344):—

It is true that the District Council had the right of fully superintending and supervising by their inspector the execution of the works, and giving directions in relation thereto; but *Steel v. S. E. Ry. Co.* (n) and *Reedie v. L. & N. W. Ry. Co.* (n) shew that these circumstances do not of themselves render a principal liable for the negligent act of his contractor, unless it was brought about by the order of the inspector.

Rigby, L. J. thought that "T. and his workpeople were, for the purposes of the rule of law which imposes liability for the negligence of servants on a master, in the position of servants of the District Council" (p. 352):—

I have not been able to discover any single particular in which the contractor can act with greater freedom or independence than a hired servant could do. It is this unlimited right of control, whether actually exercised or not, which, in my opinion, is the condition for inferring the responsibility of a master (p. 353).

In *Cameron v. Nystrom* (n) the relations of a shipowner and a stevedore's men are discussed; and it is decided that "they are the servants of a contractor employed on behalf of the ship to do a particular work."

Under the Workmen's Compensation Act, 1906, s. 4, the "principal," who gives out the work, is, primarily at least, directly liable to compensate the contractor's workman for injuries he has received.

Servant and Apprentice.

The distinction between servant and apprentice is of less importance than it was before the repeal of the 5 Eliz. c. 4, s. 5, when apprenticeship was in most trades compulsory. That statute made it wrongful for—

Any person or persons, other than such as now do lawfully use or exercise any art, mystery, or manual occupation, to set up, occupy, use, or exercise any craft, mystery, or occupation now used or occupied within the realm of England or Wales, except he shall have been brought up therein seven years at the least as an apprentice, in manner and form abovesaid.

This was extended to other trades than those mentioned in the Act; and the law remained so until 1814 (*o*). It is still, however, occasionally necessary to determine whether a contract is one of apprenticeship or hiring and service, the rights and duties under the two contracts not being in all respects the same (*p*). In some of the early settlement cases in which the question was considered whether a person had obtained a settlement by contract of service for a year—for example, in *R. v. Bolton* (*q*)—it was laid down that a contract of apprenticeship did not exist unless the word apprentice was used; but at all events, since *R. v. Mountsorrel* (*r*) this is not essential. “No technical words,” said Lord Kenyon in *Rex v. Rainham* (*s*), “are necessary to constitute the relation of master and apprentice.” The words “teach” or “instruct,” or the like, need not be employed. The Court will judge from the whole contract whether the substantial and principal object of the contract be to hire and serve, or to teach and learn; in other words, to create the relation of master and servant, or that of master and pupil (*t*). Teaching is the essence of the contract of apprenticeship; in Paley’s words, teaching is the hire. The payment of a premium is strong evidence of apprenticeship, but it is not decisive; nor will the absence of a premium be conclusive proof that the contract is one of hiring and service (*u*). “Where teaching on the part of the master,” said Taunton, J., in *R. v. Crediton* (*x*), “or

(*o*) 54 Geo. III. c. 96. See remarks of Jessel, M. R., in *Re Camden Charities* (1880), 18 Ch. D. p. 325.

(*p*) See with respect to stamps, Chap. VII. For purposes of the Embezzlement Acts an apprentice is a servant; *R. v. Mellish* (1805), Russ. & Ry. 80.

(*q*) (1783), Cald. 369.

(*r*) (1814), 2 M. & S. 460.

(*s*) (1801), 1 East, 531.

(*t*) *R. v. King’s Lynn* (1826), 6 B. & C. 97. “An apprentice is a person who by contract is taught a trade in contradistinction from a person who engages to serve generally”; per Grose, J., in *Rex v. Laindon* (1799), 8 T. R. 379.

(*u*) Bayley, J., in *R. v. King’s Lynn*; *R. v. Inhabitants of Colleshall* (1791), 5 T. R. 193.

(*x*) (1831), 2 B. & A. 493.

learning on the part of the pauper is not the primary, but only the secondary, object of the parties, that will not prevent (where work is to be done for the master) the contract being considered one of hiring and service" (*y*).

The definition of "workman" in the Workmen's Compensation Act, 1906 (s. 13), includes apprentices (*z*).

Servant and Tenant.

The same person may be at once the servant and the tenant of another; there is no incompatibility between the relations (*a*). But in law, the possession of the servant is that of the master; and from this principle follow important consequences with respect to the occupation of premises by servants.

(1.) As regards menial or domestic servants, or officials occupying premises belonging to their masters or employers, the cases which are cited below (App. B. p. 47) show that when a servant or an official occupies a house, or room, or land for the purpose of his service, and for the more convenient discharge of his duties, the relation of landlord and tenant is not created; the servant or official has no estate or interest in the premises or land (*b*); he cannot acquire any title by possession under the Statutes of Limitations (*c*); and he did not acquire a settlement by such occupation.

If the occupation of the servant be necessary to the service, then I think his occupation is the occupation of the master, although the remuneration which the servant receives is the less on account of his having the advantage of premises, or a house for the purpose of his habitation. On the other hand, if the occupation be not necessary to the service, then the fact that the advantage of the occupation is part of the remuneration of the service will not render that occupation less an occupation *qua* tenant than it would have been if the man had paid rent (*d*).

Hence it has been held that a servant who was wrongfully dismissed, and whose chattels had been removed to a place where he might have taken them but did not, cannot recover damages for injury to his goods by the weather (*e*). The relation of master

(*y*) See Appendix A. to this chapter. See *Horan v. Hayhoe*, [1904] 1 K. B. 288 (A *bonâ fide* apprentice, not a "male servant," within sect. 19, sub-sect. (3) of the Revenue Act, 1869).

(*z*) See at p. 676, *infra*.

(*a*) Cockburn, C. J., in *R. v. Spurrell* (1865), L. R. 1 Q. B. 72. As to steward being lessee of employer, *Selsby v. Rhoades* (1824), 2 S. & S. 49.

(*b*) *R. v. South Newton* (1830), 10 B. & C. 838.

(*c*) *Moore v. Doherty* (1843), 5 Ir. L. R. 449; and see remarks *arguendo*, p. 458, and per Channell, J., at p. 490, in *Lynes v. Smith*, [1899] 1 Q. B. 486.

(*d*) Per Cockburn, C. J., in *R. v. Spurrell*: see note (*a*).

(*e*) *Lake v. Campbell* (1862), 5 L. T. (N. S.) 582; *Doe d. Nicholl v. McKaeg* (1830), 10 B. & C. 721.

and servant having been broken, though wrongfully, the former had a right to remove the furniture. It may be added, that a servant residing in premises assigned to him for residence by his master, cannot dispute the title; and that having got in as a licensee, he must first give up possession if he intends to do so (*f*).

When a servant is allowed to remain in a house or room long after the termination of the relation of master and servant is at an end, it may be a question whether a tenancy is not formed. But no tenancy, not even a tenancy at will, is to be presumed from the mere circumstance that a servant does in fact remain in possession for a short time after the termination of the service. Probably the rule is accurately stated in *Kerrains v. State of New York* (*g*), in which, in answer to a contention that immediately upon the termination of service a tenancy at will arose, the Court said, "In order to have that effect, the occupancy must be sufficiently long to warrant an inference of consent to a different holding. Any considerable delay would be sufficient, but I can see no principle which would change the occupant *eo instante* from a mere licensee to a tenant."

(2.) Officers or servants of Government claiming to be exempted from the payment of rates. Persons who occupy property belonging to the Crown merely as servants of the Crown, and solely for the purposes of their duties, are exempt. But if the occupation be more than what is reasonably required for the performance of their duties, they are liable to be rated in respect of the excess (*h*).

There are two opposite and conflicting principles to be borne in mind: the first is, that persons in beneficial occupation who fall within the Statute of Elizabeth must be rated for their beneficial occupation; and the other is, that as the Crown is not named in the Statute of Elizabeth, the lands and premises occupied by the Crown or by a servant of the Crown for the purposes of the Crown, are not liable to be rated (*i*).

(3.) As regards the right to vote at Parliamentary elections, sect. 3 of the 48 & 49 Vict. c. 3, enacts as follows:—

Where a man himself inhabits any dwelling-house (*k*) by virtue of any office, service, or employment, and the dwelling-house is not inhabited by

(*f*) *Doe d. Willis v. Birchmore* (1839), 9 A. & E. 662; *Doe d. Johnson v. Baytop* (1835), 3 A. & E. 188.

(*g*) 15 Sickle, 225.

(*h*) *Earl of Bute v. Grindall* (1786), 1 T. R. 338; *R. v. Mathews* (1777), Cald. 1; *Portland v. St. Margaret*, Cald. 3, n.; *R. v. Ponsonby* (1842), 3 Q. B. 14. See Appendix B. at p. 47.

(*i*) Per Bowen, L. J., in *Martin v.*

Assessment Committee of West Derby (1883), 11 Q. B. D. at p. 153.

(*k*) Exclusive possession of part of a house is sufficient: *Adams v. Ford* (1885), 16 Q. B. D. 239. As to what constitutes "inhabitaney," see *Stribling v. Halse* (1885), 16 Q. B. D. 246, commented on in *Barnett v. Hickmott*, [1895] 1 Q. B. 691; *Laskey v. Michelmore* (1907), 24 Times L. R. 61.

any person under whom such man serves in such office, service, or employment, he shall be deemed for the purposes of this Act and of the Representation of the People Acts to be an inhabitant occupier of such dwelling-house as a tenant (*l*).

It has been held that, having regard to sect. 24 of the Representation of the People Act, 1832, the section just set out does not operate to exclude the master's occupation so as to give him, being the freeholder of the dwelling-house in question, a freehold vote for the county in respect of the dwelling-house (*n*).

(4.) Very much the same question has arisen in regard to burglary; it being requisite to state, in an indictment for that crime, who is the owner of the premises which have been broken into. It has been held that if a public servant or other person reside in royal palaces or apartments which belong to the Crown, the apartments cannot properly be described as his; they are the property of the Crown. Thus, when three persons were indicted for breaking into the lodgings of Sir Henry Hungeate at Whitehall, and there stealing certain goods, the judges thought that the indictment must be laid for breaking into the king's mansion called Whitehall (*n*). So, too, in the case of the Invalid Office at Chelsea. It was a Government office, the upper part of which was occupied by William Bunbury, the rent and taxes of the whole house being paid by the Government. It was described in an indictment as Bunbury's dwelling-house. This was held to be a misdescription (*o*). The general rule seems to be, that premises occupied by servants of a public company must be described as the company's premises. Thus a house belonging to a company in which S. and many other persons as officers of the company had separate rooms, was held to be not properly described as his mansion-house (*p*). A house which is detached from a workhouse, and is occupied by the governor, must not be described as his dwelling-house (*q*). Of course, a servant may be a tenant, and the house

(*l*) This section does not give the municipal franchise: *McCleau v. Richard* (1887), 20 Q. B. D. 285. By 54 & 55 Vict. c. 11, s. 2, the disqualification of soldiers for twenty-one days' absence from barrack-quarters (*Ford v. Barnes* (1885), 16 Q. B. D. 254) was removed, and it was provided that an absence during the qualifying period not exceeding four months at any one time in the performance of any duty arising out of the service, should not disqualify. Compulsory absence for more than four months disqualifies for the service fran-

chise, as well as for the ordinary dwelling-house franchise: *Larcombe v. Simey*, [1907] 1 K. B. 139.

(*m*) *Brooks v. Baker et al.*, [1906] 1 K. B. 11.

(*n*) 1 Hale's P. of C. 522.

(*o*) *R. v. Peyton* (1784), 1 Leach, 324.

(*p*) *R. v. Hawkins*, Foster, 38.

(*q*) *R. v. Wilson* (1806), R. & R. 115. So, too, in the case of a steward of a club: *R. v. Ashley* (1843), 1 C. & K. 198; see, however, *R. v. Margetts* (1801), 2 Leach, 930; and *R. v. Witt* (1829), 1 Mood. C. C. 248.

which he occupies may be properly described as his when he actually pays rent, and when his master could distrain, as in *R. v. Jarris* (*r*). So, too, when a toll-keeper was employed by the lessee of the tolls to be taken at the gates, and when the house was unconnected with any premises of the lessee, who had no interest in it (*s*) : or when a gardener lived in a cottage quite apart from his master's house, and kept the key of it (*t*).

Servants or Partners.

Clerks, salesmen, travellers, sailors, and, in fact, servants of all sorts, are often employed on the terms that they share in the profits of a business. Seamen and fishermen are occasionally paid in whole or in part for their services by a proportion of the profits of the adventure, voyage, or season. Are those who are thus remunerated partners? Since the decision of the House of Lords in *Cor v. Hickman* (*u*) the refinements of the old cases on this point have lost their importance. In that case it was decided that the ground of liability as a partner is the relationship of principal and agent between the parties concerned; of which relationship the sharing of profits is "cogent and often conclusive" evidence: but the sharing in profits is only evidence, which must be considered in conjunction with the conduct of the parties, and their intention as collected from the terms and scope of the agreement in its entirety (*x*). In *Ex parte Dellasse* (*y*), a person who advanced 10,000*l.* had a right to a specified percentage of profits, subject to liability to share in losses. He had also a right to have accounts furnished to him. Though it was expressly stated that the sum was advanced by way of loan, under the first section of the 28 & 29 Vict. c. 86 (*z*), the Court held that a partnership existed. The Partnership Act, 1890 (53 & 54 Vict. c. 39), enacts as follows:—

1.—(1) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.

(*r*) (1824), 1 Mood. C. C. 7.

(*s*) *R. v. Cumfield* (1824), 1 Mood. C. C. 42.

(*t*) *R. v. Rees* (1836), 7 C. & P. 568. See Appendix B. to this chapter.

(*u*) (1860), 8 H. L. C. 268, followed in *Bullen v. Sharp* (1865), L. R. 1 C. P. 86; and *Mollwo, March & Co. v. Court of Wards* (1872), L. R. 4 P. C. 419.

(*x*) *Badeley v. Consolidated Bank* (1888), 38 C. D. 338; *Re Whiteley* (1892), 66 L. T. (N. S.) 291; *Davis v. Davis*, [1894] 1 Ch. 393.

(*y*) (1878), 7 Ch. D. 511. And see *Parcey v. Armstrong* (1881), 18 Ch. D. 698.

(*z*) Repealed and re-enacted by 53 & 54 Vict. c. 39, s. 2, sub-s. (3) (d).

2. In determining whether a partnership does or does not exist, regard shall be had to the following rules :

- (1) Joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.
- (2) The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.
- (3) The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business ; and in particular

(a) The receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such :

(b) A contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such :

(d) The advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business, or liable as such.

14.—(1) Every one who by words spoken or written or by conduct represents himself, or who knowingly suffers himself to be represented, as a partner in a particular firm, is liable as a partner to any one who has, on the faith of any such representation, given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made.

APPENDIX A.

Distinction between Servant and Apprentice (p. 40).

SERVANT.

R. v. Little Bolton (1783), Cald. 367;
R. v. Eccleston (1802), 2 East, 298;
R. v. Shinfield (1811), 11 East, 541;
R. v. Barbach (1813), 1 M. & S. 370;
R. v. Billingham (1836), 5 A. & E.
 676; *R. v. Northowram* (1846), 9
 Q. B. 24.

APPRENTICE.

R. v. Highnam (1785), Cald. 491;
R. v. Laxindon (1799), 8 T. R. 379
 (use of word "apprentice" not
 necessary); *R. v. Bainham* (1801),
 1 East, 531; *R. v. Monatsorrell*
 (1814), 2 M. & S. 459. Agreement
 by a father with R. that R. should
 take the son of the former for six
 years to teach him the trade of a
 frame-work knitter. A contract of
 apprenticeship, distinguishing the
 case from *R. v. Little Bolton*, inas-
 much as the son in the former was
 entitled to none of the earnings.
 "The whole contract with the father
 was bottomed and had for its object
 the instruction of the son and no-
 thing else." *R. v. Bilborough* (1817),
 1 B. & Ald. 115; *R. v. Kidwelly*
 (1824), 4 D. & R. 309; *R. v. King's*
Lynn (1826), 6 B. & C. 97; *R. v.*
Combe (1828), 8 B. & C. 82; *R. v.*
Tipton (1829), 9 B. & C. 888; *R. v.*
Edingale (1830), 19 B. & C. 739;
R. v. Knutsford (1831), 1 B. & Ad.
 726; *R. v. Crediton* (1831), 2 B. & Ad.
 493; *R. v. Newton* (1834), 1 A. & E.
 238; *R. v. Wishford* (1835), 4 A. &
 E. 216; *R. v. Lightham* (1836), 4 A.
 & E. 936. When the contract was
 not under seal and was not properly
 stamped, but the manifest object was
 to teach, the Courts held that there
 was a defective contract of appren-
 ticeship.

APPENDIX B.

Occupation, whether as tenant or not (p. 41 et seq.).

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Eyre v. Smallpage (1750), 2 Bur. 1060. Plaintiff, controller of Chelsea College, and residing in the controller's apartments, which he occupied in virtue of his office. See also reference to the *St. Bartholomew Case*, p. 1061.

R. v. Mathews (1777), Cald. 1. Keeper of a lodge in Windsor Park, and two acres of land, appointed by the ranger, rateable as ranger. "When a servant," said Mansfield, C.J., "occupies a house and two acres of land, whether he pays for them by a rent or by service, it can make no difference as to his being rated, he is equally liable." This test is not now employed.

Bute v. Grindall (1786), 1 T. R. 338. The ranger of Richmond Park, rateable as beneficial occupier of certain enclosed lands yielding profit to him.

R. v. Melkridge (1787), 1 T. R. 598. Person employed as herd by several persons having a right of common and permitted by them to occupy a tencement of 10*l.* a year as a reward for his services; settlement by occupation.

R. v. Terrott (1803), 3 East, 506. A commanding officer having certain apartments allotted to him and his family in barracks for his residence, held to be rateable to the poor. The ground of decision as put in Lord Ellenborough's judgment is that the officer, unlike a private soldier, who had no accommodation beyond what was required for sleeping, eating, and the like, "had a degree of personal benefit, and accommodation from the property enjoyed by him, *ultra* the mere public use of the thing; and which excess of personal benefit and accommodation *ultra* the public use may be considered as so much of salary and emolument annexed to the office."

R. v. Minster (1814), 3 M. & S. 276. A master found his bailiff, a servant in receipt of weekly wages, a house and pasturage for two cows on the

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R. v. St. Luke's Hospital (1760), 2 Bur. 1053. Servants of this charity not rateable because not occupying distinct apartments.

R. v. Field (1794), 5 T. R. 587. Person employed at annual wages as superintendent of a philanthropic society with no distinct apartments in the house except a bed-room; not occupier of the house. The question before the Court was whether she was the occupier of the whole, but the reasoning was opposed to her being the occupier of any part.

R. v. Tynemouth (1810), 12 East, 46. The occupation of a lighthouse by a servant placed there to look after the light in consideration of a salary, is the occupation of his master, who is rateable.

Bertie v. Beaumont (1812), 16 East, 33. A servant from week to week put by his master into possession of a cottage divided into two parts, one occupied by the servant, the other occupied by Mrs. D., who paid rent. The servant paid no rent, but his wages were less by 5*l.* in the year on account of this circumstance.

R. v. Cheshunt (1818), 1 B. & Ald. 473. A labourer employed by the Board of Ordnance. He previously occupied a house at a rent of 7*l.* The house was purchased by the Board. He continued to reside in part of the house at a weekly rent of 2*s.*, which was deducted from his wages. No occupation as tenant.

R. v. Bardwell (1823), 2 B. & C. 161. Pauper hired for a year as a shepherd. He was to receive a house and a garden rent free, 7*s.* as wages a week, and the going of thirty sheep with his master's flock for the more convenient performance of the pauper's duties; did not occupy the house and garden as tenant. Bayley, J., took occasion to say that *R. v. Minster* was "open to much observation."

Hunt v. Colson (1833), 3 Moore & Scott, 790. Servant, employed by Highgate Archway Company to collect tolls. He lived in the toll-house,

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master's land, not connected with the service or necessary for the convenient performance of it; the servant had a distinct interest in the pasturage of the two cows.

Doe d. Nicholl v. McKaig (1830), 10 B. & C. 721. Defendant, minister of a dissenting congregation. He was put in possession of a chapel and dwelling-house by lessors, in whom the legal estate was vested in trust to permit the chapel to be used for the purpose of religious worship. Being a tenant at will after demand for possession, he was not entitled to a reasonable term for the purpose of removing his goods. "If the tenant," Lord Tenterden observed, "after the determination of his tenancy in this case, by a demand of possession, had entered on the premises for the sole purpose of removing his goods, and had continued there no longer than was necessary for that purpose, and did not exclude the landlord, perhaps he might not have been a trespasser." See *Doe d. Jones v. Jones* (1830), 10 B. & C. 718, and *Lake v. Campbell* (1862), 5 L. T. (N. S.) 582.

R. v. Wall Lynn (1838), 8 A. & E. 379. R., a brewer, engaged L., as his clerk, at a yearly salary, and agreed to permit him to occupy a certain house as residence, free of rent, rates, and taxes. Another clerk was to be lodged in the same house. L. rateable; L. being an "independent holder," and having absolute dominion, and the house not being the master's.

R. v. Bishopston (1839), 9 A. & E. 824. Pauper resided in a cottage, rented by a millowner for families employed in the mill. Some of the children of the former worked in it. The agreement was that 2s. a week should be deducted from the children's wages as rent. The pauper worked as a husbandman. Held, that the relation of landlord and tenant existed. "There was," as Williams, J., observed, "a renting by one who was not servant."

R. v. Ponsonby (1841), 3 Q. B. 14. The occupiers of apartments in Hampton Court, who reside there with their families and provide their own furniture, rateable.

Hughes v. Chatham (1843), 5

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and one shilling a week was deducted from his wages by way of rent. The company having contracted to sell the land on which the cottage stood, discharged the plaintiff from their employment and gave him notice to quit, to which he assented. Held, not a tenancy, and plaintiff could not maintain trespass for pulling down the toll-house. At *Nisi Prius*, Tindal, C. J., ruled that there was a tenancy, and the Court appears to have assumed that there was a tenancy before the determination of service.

Dobson v. Jones (1844), 5 M. & G. 112. Surgeon in Greenwich Hospital, who was required to occupy rooms in the hospital; not entitled to vote as tenant. The Court observed that "the relation of landlord and tenant could not be created by the appropriation of a particular house to an officer or servant as his residence where such appropriation was made with a view not to the remuneration of the occupier, but to the interest of the employer, and to the more effectual performance of the service required from such officer or servant."

Mayhew v. Suttle (1854), 4 E. & B. 347. Defendant, who was in possession of a certain messuage, where the sale of beer was carried on by one George Utting for defendant, agreed, in consideration of a bondsman becoming answerable for the amount of 50l. in default of payment by the plaintiff, to let the plaintiff enter into the premises and carry on therein the trade for the defendant until the agreement should be determined by the notice mentioned in the agreement. The plaintiff was to carry on business "in the place and stead in the same manner and with the same privileges as G. Utting hath heretofore done." The agreement proceeded, "whenever either of the said parties hereto shall be desirous of determining and putting an end to this agreement, he, the said F. Mayhew, shall and will, on receiving from the said G. Suttle one month's previous notice in writing of such desire, and without being paid, or requiring to be paid, any sum of money, &c., quit and deliver up to him, the said G. Suttle, the said trade

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M. & G. 54. A master ropemaker occupied a house in a Government dockyard. He paid no rent for it, and held it as part remuneration for his services. No part of the house was used for public purposes, and he had the exclusive control of it. The distinction to be deduced from the settlement cases, *Tindal, C. J.*, took to be this:—If a servant is not *permitted* to occupy as a reward, in the performance of his master's contract to pay him, but required to occupy in the performance of his master's contract to serve his master, his occupation is that of his master. As nothing in the facts of the case showed that the master ropemaker was required to occupy the house for the performance of his duties, or did occupy it in order to perform them, or that the occupation was conducive to that purpose more than any other house, held that the claimant occupied the house as tenant within 2 Will. IV. c. 45, s. 27.

Gambier v. Lydford (1854), 3 E. & B. 346. The governor of a prison rateable in respect of a coach-house and stabling within the precincts of the prison to the extent to which the occupation was in excess of what was necessary for the performance of his duties. Outside the prison precincts were buildings occupied by the officers of the prison. None occupied more than was necessary for the discharge of their duties and the accommodation of their families; the dwellings were assigned to the officers by the directors, and they had no discretion as to the houses and apartments assigned to them. Held, by Campbell, C. J., and Wightman, J., that the residences outside the walls were rateable. Coleridge, J., dissented as to the latter point.

Ford v. Harington (1869), L. R. 5 C. P. 282. Canon of a cathedral church and one of the chapter occupied a house with which the chapter could not interfere, and which the canon repaired. Held, that he occupied as canon and a corporation sole and not as one of the chapter, and that he could vote in respect of it.

Smith v. Seghill (1875), L. R. 10 Q. B. 422. S., a collier, resided in

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or business, and the full quiet and peaceable possession of all and every of the said premises." Notwithstanding the provisions with respect to determination by notice, the Court thought that no tenancy had been created, and that the occupation was ancillary to the carrying on of the trade for the defendant.

Clark v. Bury St. Edmunds (1856), 1 C. B. N. S. 23. Keeper of the Guildhall at Bury St. Edmunds held to occupy house attached to it as servant because he was required to reside there for the performance of his duties.

R. v. Tiverton (1861), 30 L. J. M. C. 79. A Wesleyan minister, who lived in a house taken by the stewards of the circuit within which he officiated, paid the rates and taxes; but they were repaid by the stewards. It appeared to be the practice of the stewards to take houses for the ministers. No settlement gained. According to Crompton, J., the minister was very much in the position of servant to the stewards. This case appears peculiar. (1) The minister does not appear to have been required to reside in the house; (2) it was not the house of the stewards; (3) he actually paid the rent to the landlord. (See remarks of Willes, J., in the following case.)

White v. Bayley (1861), 10 C. B. N. S. 227. Plaintiff appointed librarian and storekeeper on these terms, *inter alia*: that the person to be appointed should have premises, rent and taxes free, in a good situation; that 35l. per cent. should be allowed to the storekeeper on all books sold out of the shop, but not on donations or subscriptions, he making such arrangements with booksellers, agents of the society, as the committees should from time to time determine. To carry on a retail business in other New Church works and general literature for his own benefit. The society had purchased the lease, which was assigned to trustees for it. Held, that no tenancy existed. In the view of Willes, J., "no tenancy in the premises even to the extent of a tenancy at will ever did rest in the plaintiff." The agreement was one of service,

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house belonging to his employers. He paid no rent; was not entitled to notice to quit, and the occupation would cease when S.'s services closed. The house was one of several which his employers filled at their discretion. It was not absolutely essential for workmen to live in those houses, though the owners preferred that the workmen should live near their work. An occupier within 32 & 33 Vict. c. 41, s. 19.

Martin v. West Derby (1883), 11 Q. B. D. 145. Police superintendent occupied house quarter of a mile from police station; rent paid out of rates and deducted from salary. Held, rateable. *Gumbier v. Lydford* (*vid. sup.*) followed.

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and it made no difference that as a part of the remuneration he was to have liberty to carry on his own retail business. "I can quite conceive a case such as this, where the representatives of a society might go to a person having already a shop where he was carrying on business, and agree with him to become their agent for the sale of their particular publications, and to pay him a certain salary for his services, and in addition to pay the rent and taxes of the premises, and where a question might arise whether by this arrangement an interest in the shop vested in the society. The proper answer in such a case would seem to me to be that it would not."

R. v. Spurrell (1865), L. R. 1 Q. B. 72. A bailiff of a farmer who occupied a cottage belonging to his master, without paying rent, in part remuneration of his services, not a "substantial householder" within 43 Eliz. c. 2, s. 1.

For v. Dalby (1874), L. R. 10 C. P. 285. A sergeant of militia occupied as such a house close to the premises in which the arms, &c. of the corps were stored. The house was assigned to him by the commanding officer as a place to live in; and if he left it without the permission of his officer, he would be guilty of a breach of discipline. He had 2s. 4d. per week deducted out of his pay, as occupier of the house; but he would not receive the 2s. 4d. extra if he resided elsewhere. He could perform the duties required of him equally well if he were living elsewhere, which he might do with his officer's permission. Not tenant within s. 3 of 30 & 31 Vict. c. 102.

Dent v. Roberts (1877), 3 Ex. D. 66. Police superintendent occupied house within boundaries of station. Compelled to live there to discharge duties. Sum for use of house deducted from salary. Held, not liable to income tax or inhabited house duty in respect of it.

APPENDIX C.

Partner or not Partner (p. 44).

PARTNER.

Grace v. Smith (1775), 2 W. Bl. 998.

Waugh v. Carrer (1793), 2 H. Bl. 235. Two shipping agents agreed to share in certain property, the profits of their respective commissions and discounts on tradesmen's bills; held liable as partners to those with whom either contracted, though the agreement prescribed that neither should be answerable for the acts or losses of the other.

Dry v. Boswell (1808), 1 Camp. 329. Action by B. for work and labour in regard to the repair of a lighter. Ellenborough, C. J., directed the jury, that if R., the sole owner, and B., agreed that the *net profits should be equally divided among them*, they were partners in the concern, so as to be liable to third parties; but not so, if the agreement were to give half the gross earnings, that being only a mode of paying wages of labour.

Ex parte Hamper (1811), 17 Ves. 403.

Cheap v. Cramond (1821), 4 B. & Ald. 663. Merchants in London, who became bankrupt, recommended consignments of goods to a house abroad. It was agreed that all commissions on the sales of goods recommended or "influenced" by the one house to the other should be equally divided without allowing a deduction for expenses; the bankrupts were partners *quoad hoc* with the firm abroad.

Heyhoe v. Burge (1850), 9 C. B. 431. A. and B. agreed "for services performed," to give to C., the defendants, one-fourth part of the clear profits arising from a contract for making a certain railway; C. liable as a partner to third persons.

Greenham v. Gray (1855), 4 Irish C. L. R. 501. Agreement between plaintiff and defendant to carry on the business of cotton spinners at defendant's mill. Plaintiff to have the full control and management of mill, and to give his whole time to it; to direct all departments; to have the exclusive power of dismissing servants; to be paid for his

NOT PARTNER.

Wilkinson v. Frasier (1802), 4 Esp. 182. Action by seaman for wages; contended that he was a partner on the ground that the produce of the voyage was to be divided in certain proportions; not a partner.

Hesketh v. Blanchard (1803), 4 East, 144. A. having neither ready-money nor credit, proposes to B., the plaintiff, that if he will order along with A. certain goods to be shipped on a joint adventure, B. shall have half of any profit for his trouble. B. ordered the goods on their joint account and afterwards paid for them; no partnership between them, though B. as a partner was liable to third persons.

R. v. Hartley (1807), R. & R. C. C. 139. Defendant employed to take coals from F.'s colliery and sell them; to be paid for the labour by allowing him two-thirds of the difference between the price at which he sold them and the price charged at the colliery; a servant and not a partner.

Mair v. Glennie (1815), 4 M. & S. 240. Mair, owner of a ship, bound on a voyage to Havannah, with a cargo belonging to him. Young, the master of the ship, was party to an agreement with Mair that Young should have in lien of all wages, primage, &c., one-fifth share of the profit or loss of the intended voyage, and was to follow Mair's instructions.

Geddes v. Wallace (1820), 2 Bligh, 270. The deed of copartnership of a certain company was subscribed by Geddes, who was to have one-seventeenth share without advancing any capital. Article 3 stated that, "in the said capital stock the partners shall be interested in the profits or loss in the following proportions . . . the said John Geddes, one-seventeenth share." By an agreement referred to in the articles of copartnership, he was to receive 100l. besides his seventeenth share of the profit or loss. The House of Lords, looking to the whole of the articles, and to the conduct of the parties,

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management, &c., 150*l.*, and to receive one-fifth part of the nett profits. Plaintiff and defendant partners.

Re Whiteley; Ex parte Smith (1892), 66 L. T. (N. S.) 291. W., who was insolvent, assigned all his machinery, stock, &c. to B., who was his largest creditor; B. to carry on the business under the name of W., receiving a weekly salary as manager; B. to discharge out of the profits all W.'s existing and future liabilities; all profits to be placed to W.'s credit, and as soon as losses made up, B. to re-sell business to W.; B. becomes bankrupt. Held, B. and W. were partners.

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decided that as between him and them, he was not a partner.

Smith v. Watson (1824), 2 B. & C. 401. A., a merchant, bought whale-bone through B., a broker. It was agreed that, as remuneration for his trouble, B. should receive one-fourth of the profits arising from the sale, and bear an eighth proportion of the losses. Although B. might be liable to third persons, there was no partnership with A.

Pott v. Eyton (1846), 3 C. B. 32. Eyton's name appeared over door of shop kept by Jones, and he received per-centage of profits; goods purchased in Eyton's name; no evidence of credit given to Eyton; not a partner as to third persons.

Rawlinson v. Clarke (1846), 15 M. & W. 292. Plaintiff sold to defendant his business as a surgeon and apothecary. Plaintiff agreed to continue to reside at his place of business and to carry on the profession as before for a year, and to introduce defendant to his patients. Defendant to allow plaintiff during the year a moiety of the clear profits; the deed did not create a partnership.

Stocker v. Brockelbank (1851), 3 Mac. & G. 250. Agreement between plaintiff and defendant that the plaintiff would serve the said "partners" as "manager," and that the plaintiff should have the conduct and management of the business, and should receive for his services such a sum as would be equal to 40*l.* per cent. upon the nett profits; no partnership existed.

R. v. Wortley (1851), 21 L. J. M. C. 44. Defendant entered into an agreement "to take charge of the glebe-land of the Rev. J. B. B. Clarke; his wife undertaking the dairy and poultry, &c., at 15*s.* a-week, till Michaelmas, 1850, and afterwards at a salary of 25*l.* a year and a third of the clear annual profit, after all expenses of rent, rates, labour, interest on capital, &c., are paid, on a fair valuation made from Michaelmas to Michaelmas. Three months' notice on either side to be given, at the expiration of which time the cottage to be vacated by Wortley"; defendant and his master not partners *inter se*.

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Andrews v. Pugh (1854), 24 L. J. Ch. 58. Plaintiff employed the defendant to obtain orders for him, the plaintiff allowing to the defendant a commission of 15 per cent. on the gross amount of profits. The defendant carried on the business with the plaintiff, but his name was not joined with that of the plaintiff; no partnership *inter se*.

Cox v. Hickman (1860), 8 H. of L. 267. S. and S., having become embarrassed, assigned their property to trustees, and empowered them to carry on the business, and to divide the income rateably among the creditors. Held, no partnership created so as to make creditors liable to third parties.

R. v. Macdonald (1861), 31 L. J. M. C. 67. Cashier and collector of a firm, received in addition to fixed salary a certain percentage on profits; was not liable to losses, and had no control over business; a servant.

Ross v. Parkyns (1875), L. R. 20 Eq. 331. Agreement between plaintiff and defendant to carry on underwriting business in the name of defendant; all policies, losses, and averages to be signed and settled by defendant, or by the plaintiff as his agent. Plaintiff to be paid or allowed a salary or sum of 150*l.* per annum, and one-fifth of the profits; plaintiff to keep the books of accounts, he obtaining such assistance from time to time as he may find necessary, subject to the approval of the defendant; plaintiff not to bear any loss; contract one of hiring and service and not of partnership.

See also *Bullen v. Sharp* (1865), L. R. 1 C. P. 86; *Moltwo v. Court of Wards* (1872), L. R. 4 P. C. 419; *Budley v. Consolidated Bank* (1888), 38 Ch. D. 238; *Davis v. Davis*, [1894] 1 Ch. 393.

APPENDIX D.

Possession by Servant (p. 34).

THE subject of possession by servants has been the cause of much confusion and perplexity in criminal law. It may be expedient to give the outlines of the history and growth of the law. English lawyers had given definitions of larceny which implied wrongful gaining *possession* of chattels; and the history of the matter is the history of a long attempt to reconcile this with the necessities of society. Bracton's definition (iii. c. 32), which is almost identical with that found in the Institutes (iv. 1), makes the offence turn on the intent—*contractatio rei alienae fraudulenta cum animo furandi*. But it came to be understood that *trespass*, or wrongful interference with possession, was essential to felony. To Glanville (lib. x. c. 13) the question had presented itself, whether a bailee could be guilty of larceny. His decision is a *furto enim omnimodo excusatur per hoc quod initium habuerit sue detentionis per dominum illius rei*. In the reign of Edward IV. the Courts had to consider whether goods which had been bailed could be stolen by a bailee. It was decided by all the judges of the Exchequer Chamber, except Needham, that the bailee could not be indicted for larceny: 13 Edw. IV. 9. He had, they said, "loyal possession of the goods, and had not taken them *vi et armis*." The judges, however, decided that it was felony for a person who had a mere special use of an article—*e.g.*, of a piece of plate laid before him at a tavern—to convert it to his own use. By a legal fiction the possession was said, in the case of a bare charge, as distinguished from a general bailment, to be in the owner. (Russell, ii. 135; Hawk. P. C., I. c. 19, § 6.)

When the Courts came to deal with similar offences committed by servants, which were probably in these days a common form of larceny, they resorted to fictions and refinements. In the Year Books (3 Hen. VII. 12, and 21 Hen. VII. 15) the question is discussed whether a servant who made away with his master's sheep, might be indicted for larceny. The difficulty with respect to possession was surmounted by declaring that a servant had none; though some of the authorities appear to confine this to the case of servants residing in their master's house.

The custody of a servant is never deemed possession in the case of land; and this seems to be the rule in regard to goods, except in one case, *viz.*, when he receives them from a third person, in which case he possesses them as a bailee, until he appropriates them to his master. (Pollock and Wright on *Possession in the Common Law*, p. 60.)

1. A fresh difficulty, however, arose. A servant may be virtually a bailee; you may give him your jewels to keep for you; you may send him with cattle to market to sell. If he makes away with these, can he be convicted of larceny? The Courts were embarrassed by their former decisions with respect to bailees; and servants appear to have stolen with impunity articles put into their charge. The 21 Hen. VIII. c. 7, was in consequence passed. This statute made it felony for servants to steal or convert to their own use contrary to the trust and confidence reposed in them, any caskets, jewels, money, goods, or other chattels delivered to them for safe keeping. The remedy proved incomplete. By judicial construction the statute was confined to cases in which goods had been delivered for safe keeping. To prove larceny it was necessary to prove trespass (Hawkins, P. C., I. c. 19, § 1), and this could sometimes not be done even with the exercise of the utmost subtlety. Frequent miscarriages of justice were the result. Thus, a weaver, to whom yarn had been delivered to be worked up at his house, could not be indicted for larceny, if he misappropriated the material. (Russell on Crimes, ii. 134.) The Legislature passed a series of statutes specially dealing with

such offences. Servants who made away with chattels given to them on behalf of their masters were, as a rule, not punishable. Yet acting upon puzzling refinements, the criminal law punished a servant who had "determined his original, lawful, and exclusive possession."

In consequence of a startling decision that a banker's clerk who had appropriated to his own use notes paid across the counter to a customer's account could not be punished, the 39 Geo. III. c. 85 was passed, and it was made theft for a servant or clerk to embezzle money or goods received or taken into possession, "for or in the name, or on the account of his master." The cases on this subject, which involve many subtle distinctions, will be found in Russell on Crimes, vol. ii. The present law on the subject is contained in 24 & 25 Vict. c. 96. The 67th section provides that:—

Whosoever, being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, shall steal any chattel, money, or valuable security belonging to or in the possession or power of his master or employer, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three [now five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

By section 68 it is enacted that:—

Whosoever, being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, shall fraudulently embezzle any chattel, money, or valuable security, which shall be delivered to or received or taken into possession by him for or in the name or on the account of his master or employer, or any part thereof, shall be deemed to have feloniously stolen the same from his master or employer, although such chattel, money, or security was not received into the possession of such master or employer otherwise than by the actual possession of his clerk, servant, or other person so employed, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

By section 72 of the same Act, it is enacted that a person indicted for embezzlement may be convicted of larceny if it be proved that he ought to have been indicted of larceny, or *vice versa*. Notwithstanding these amendments, the law is still disfigured by embarrassing subtleties. See *R. v. Prince* (1868), 1 C. C. R. 150, as to distinction between servants having general authority and those having limited authority.

2. As against a wrongdoer mere possession gave a right. In the United States the Courts have held that goods stolen from a thief may be described either as goods of the true owner or of the thief: Bishop's *Criminal Law*, ii. s. 801.

3. The chief writ by which civil redress was obtained in ancient times was a writ of trespass, a missive calling upon the defendant to answer a charge that he had done a wrong *vi et armis*. It implied, no doubt, that the plaintiff had been disturbed in the possession of his property; but owing to the absence of other remedies—no action on the case is mentioned in the books until the reign of Edw. III., 22, Ass. 41,—the action of trespass was frequently used in circumstances to which it was not obviously applicable. As late as the reign of Elizabeth it was still undecided whether a master could maintain trespass against a servant for taking and carrying away his goods which were in the custody of the servant, who was employed in his master's shop. The Court decided in *Bloss v. Holman*, Owen 52, that trespass lay in these circumstances. See as to master's possession, *Hall v. Davis* (1825), 2 C. & P. 33. On the other hand, as against a mere wrongdoer, a servant seems in some cases to have had, and, it may be, still has, such possession as enabled him to maintain trespass against strangers: *Moore v.*

Robinson (1831), 2 B. & Ad. 817, decided upon *Pitts v. Paine*, 1 Salk. 10; *Miles v. Caly* (1700), 12 Mod. 381. In all such cases, however, it would appear that the servant was at a distance from his master and had to act according to his own discretion. (See Pollock and Wright on *Possession*, 3rd ed., p. 139; Chitty's Pleading, i. 196.)

4. For many other purposes the possession of the servant is that of the master. Thus in bankruptcy it is held that goods which are in the possession of a servant are within the order and disposition of his master, and as such pass to his creditors. This is illustrated by *Haggard v. Mackenzie* (1858), 25 Beav. 493. A Scotch firm established a branch in London, which was wholly conducted by an agent and manager at a fixed salary. It was agreed that he was to have a general lien on all goods consigned to him for bills accepted by him for the firm. The firm having become bankrupt, it was held that the goods passed to the assignees unaffected by the lien. See, however, *Ex parte Hidden, Re Hooper* (1860), 3 L. T. (N. S.) 386. When a son had possession of certain goods as a servant of his father, and for the purpose of carrying on business for his father's benefit only, it was held that the goods did not pass to the son's assignees under the 21 James I. c. 19; *Stafford v. Clark* (1823), 1 C. & P. 24. See the curious case, *Jackson v. Irvin* (1809), 2 Camp. 48, where a warrant under a *fi. fa.* against a person was directed to his servant and another person as special bailiffs; and *Ex parte Majoribanks* (1847), De Gex, 466, as to the effect of joint possession of goods by servants of bankrupt and owner of goods.

There is no power under s. 27 of the Bankruptcy Act, 1883, to order a servant to produce documents, without the master's authority: *Re Higgs* (1892), 66 L. T. (N. S.) 296.

CHAPTER V.

PARTIES TO THE CONTRACT.

ANY one who is of the age of twenty-one, and is under no legal or natural disability, may make either as master or servant a valid contract of hiring and service.

This proposition is imperfect and unsatisfactory: but it is impossible to comprehend under one head the various forms of disability or qualified power of contracting, such as idiocy, infancy, coverture, &c. (a).

English law scarcely recognises the distinction known to and of so much importance in Roman law between *liberales operæ* and *illiberales operæ* (b), occupations for which no wages proper were given, and those for which they were. But there is a peculiarity with respect to counsel or barristers. The relation of client and counsel is incompatible with that of master and servant; there can be no contract of hiring between them with respect to litigation. The whole subject was reviewed by the Court of Common Pleas in *Kennedy v. Broun* (c), and the main conclusion was thus expressed: "We consider that a promise by a client to pay money to a counsel for his advocacy, whether made before, or during, or after the litigation, has no binding effect; and, furthermore, that the relation of counsel and client renders the parties

(a) *Smith's Master and Servant*, 1; *Wood's Master and Servant*, 8. These cases are specially considered in this chapter, *infra*.

(b) *Windscheid*, ii. s. 404.

(c) (1863), 13 C. B. N. S. 677; action on a promise, in consideration of services as counsel, held not to lie. See remarks on this case in *Pollock on Contracts*, 7th ed., 669; also *Mostyn v. Mostyn* (1870), L. R. 5 Ch. 457; and *Robertson*

v. McDonagh (1880), 14 Cox, C. C. 469. As to the right of medical practitioners to sue for fees, see Medical Act of 1858, and Apothecaries Act, 55 Geo. III. c. 194; and as to the state of the law before the passing of the former Act, see *Veitch v. Russell* (1842), 3 Q. B. 928. "The physician has a claim, usually recognised, to remuneration for his services; but he has no legal title to it." He could, however, have made a contract with respect to it.

mutually incapable of making any contract of hiring and service concerning advocacy in litigation."

A person who is under a binding contract to serve A. for a certain time cannot, without A.'s consent, enter into a binding contract with B. for the same period. "One who has contracted," says Lord Ellenborough in *R. v. Norton (d)*, "a relation which disables him from serving any other without the consent of his first master is not *sui juris*, and cannot lawfully bind himself to serve such second master." Hence the Courts refused to admit that soldiers gained settlements by hiring and service while they were still in the employment of the Crown (*e*). In *R. v. Norton (d)* it was held that a deserter from the King's service could not be "lawfully hired" within the meaning of 3 Will. & Mary, c. 11, s. 7. But one who is not in all respects the servant of A., because he has previously entered into a binding contract with B., may be the servant of A. in such a sense that A. will be liable to him for his wages, and will be responsible to third persons for his acts (*f*).

The position of servants and apprentices who enlist in the Army is now governed by sect. 96 of the Army Act, 1881 (14 & 45 Vict. c. 58); and the operation of this section is extended to militia recruits by sect. 9 of the Militia Act, 1882 (45 & 46 Vict. c. 49).

In regard to seamen volunteering into the Navy, see Merchant Shipping Act, 1894, ss. 195--197. By sect. 196, sub-sect. (1), a proportionate part of wages down to the time of entry must be paid by the master. By sect. 195 seamen are allowed to leave their ships to enter the Navy, and "all stipulations introduced into

(*d*) (1808), 9 East, 206; *R. v. Hindringham* (1796), 6 T. R. 557. A., an infant indentured as an apprentice to B.; during the apprenticeship he entered the Navy with the consent of his master; but his articles were not delivered up. After quitting the Navy, and before the expiration of the apprenticeship, he hired himself to C. Held, that A., not being *sui juris* at the time, could not enter into a legal contract; and that the service in the Navy did not discharge the indenture. As to difference between contract with soldier and one with infant, *R. v. Childesford* (1825), 4 B. & C. 94, 100.

(*e*) *R. v. Beaulieu* (1814), 3 M. & S. 229. A soldier, though not "lawfully hired" within the meaning of the statute, could have recovered wages for his services. The Court refused to find

such a hiring and service as would give a settlement unless the master had an absolute right to the services for the whole time. On the other hand, it was held that hiring for a year of a militiaman, if the fact of his being such were made known to the master at the time of hiring, gave a settlement: *R. v. Westerleigh* (1773), Burr. S. C. 753; *R. v. Winchcomb* (1780), 1 Doug. 391; *R. v. Taunton* (1829), 9 B. & C. 831; *R. v. St. John* (1829), 9 B. & C. 896; *R. v. Elmley Castle* (1832), 3 B. & Ad. 826; *R. v. St. Mary-at-the Wall* (1834), 5 B. & Ad. 1023; *R. v. Winesham* (1835), 2 A. & E. 648 (case of a member of a Volunteer corps under 44 Geo. III. c. 54).

(*f*) See Chap. II., *supra*.

any agreement whereby any seaman is declared to incur any forfeiture, or be exposed to any loss in case he enters into his Majesty's naval service shall be void, and every master or owner who causes any such stipulation to be so introduced shall incur a penalty not exceeding 20*l*."

(A.)—Infants and Young Persons.

Contracts of hiring and service by infants—that is, by persons who have not attained the age of twenty-one—are binding on them, provided they are not proved to be to the prejudice of the infants (*g*).

On coming of age an infant might, at Common Law, ratify a promise previously made by him so as to render it binding. The Legislature, however, has greatly limited the power of ratification. The Infants' Relief Act of 1874 (37 & 38 Vict. c. 62) enacts (s. 1) that—

All contracts, whether by specialty or by simple contract, henceforth entered into by infants for the repayment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for necessities), and all accounts stated with infants, shall be absolutely void; provided always that this enactment shall not invalidate any contract into which any infant may, by any existing or future statute, or by the rules of Common Law or Equity, enter, except such as now by law are voidable.

Section 2, which is of most consequence in this connection, says:—

No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age.

It was decided in *Cochead v. Mullis* (*h*)—an action for breach of

(*g*) Coke on Litt. 78 b.

(*h*) (1878), 3 C. P. D. 439; see also *Northcote v. Doughty* (1879), L. R. 4 C. P. D. 385; *Ex parte Kibble* (1875), L. R. 10 Ch. 373. As to what will

amount to a ratification of a contract by an infant, see *Cornwall v. Hawkins* (1872), 11 L. J. Ch. 435; infant entered into service of milk-seller, and covenanted not to carry on same trade;

promise of marriage—that the second section does not exclusively apply to such contracts as are mentioned or referred to in the first section; the section, therefore, extends to contracts of hiring and service. The question generally is whether, notwithstanding the statute, there has been a new contract (*i*).

The chief exception at Common Law to the principle, that infants' contracts do not bind them, was in the case of contracts for necessities, which include, according to Coke's explanation, "necessary meat, drink, apparel, necessary physic, and such other necessities, and likewise for good teaching or instruction whereby he (the infant) may profit himself afterwards" (*k*), and which need not exclude many articles popularly known as luxuries. It is now settled that an infant will also be bound by contracts which are to his benefit or advantage (*l*); and it is for the Court, looking at the entire contract, to determine whether it is of this character or not. Contracts of hiring and service and apprenticeship are regarded as *prima facie* for the benefit of infants (*m*), and are, therefore, *prima facie* binding on them.

It is for the Court . . . to determine . . . whether the contract is for the benefit of the infant; and if the Court should be of opinion that the agreement as a whole is not for his benefit . . . then the Court says it is not binding on him (*n*).

and, after coming of age, he continued in the same service for eighteen months without repudiating his promise. Held, that this amounted to ratification. In *Birkin v. Forth* (1875), 33 L. T. 532, it was held that a minor, who agreed on the 11th Dec 1871, to serve for five years as a warehouseman, and who having attained the age of 21 in April, 1873, continued in the service of his employers, did not ratify his agreement by writing on the 17th of Jan., 1874, a letter saying that he would give up his situation in twenty-eight days. Probably the decision turned more on the fact that the Court relied on *Harmer v. Killing* (1804), 5 Esp. 102, which shows that a promise to bind as a ratification must be given voluntarily by a minor, and with full knowledge that he was released.

(i) *Brown v. Harper* (1893), 68 L. T. 488.

(k) Coke Litt. 172 a. See Lord Mansfield's judgment in *Zouch v. Parsons* (1765), 3 Bur. 1801; Bacon's Abridg. "Infancy," L. 3, 360; *Skrine v. Gordon* (1875), 9 Ir. C. L. 479; *Hill v. Arbon* (1876), 34 L. T. 125; *Hart v. Prater* (1837), 1 Jur. 623 (riding-horse a neces-

sary for a chemist's apothecary, who was ordered by doctor to take riding exercise). As Kelly, C. B., pointed out in *Ryder v. Wombwell* (1868), L. R. 3 Ex. 90 (jewelled solitaires and a silver goblet necessities for a baronet's son), "necessaries" cannot be separated from "its legal adjunct, suitable to the estate and condition of the infant." See *Walter v. Everard*, [1891] 2 Q. B. 369.

(l) "And an infant shall be bounden by all acts done by him during his nonage, which acts are for his advantage, if not in some special cases; and, therefore, if an infant at the years of discretion make a bond for his necessary meats and drink, or for his necessary apparel, or for his schooling, he shall not avoid the same." Perkins, C. I. S. 14.

(m) Pollock on *Contracts*, p. 67, 7th ed. See *Young v. Hoffmann*, [1907] 2 K. B. 646, *per* Cozens-Hardy, M. R., at p. 650, and *per* Gorell Barnes, P., at p. 654.

(n) *Per* A. L. Smith, L. J., in *Clements v. L. & N. W. Rail. Co.*, [1894] 2 Q. B. at p. 495, approving *De Francesco v. Barnum* (1890), 45 Ch. D. 430. And see *Flower v. L. & N. W. Rail. Co.*, [1894] 2 Q. B. 65. See next note.

An infant who has bound himself as apprentice to one master cannot before the expiration of the period of his service transfer his services to another (*o*). But if a contract of apprenticeship or hiring and service between a minor and a person of full age be inequitable and prejudicial to the former it will not bind him (*p*). Thus a contract of hiring and service which subjects an infant to a penalty or forfeiture, or which requires him to serve without making the master liable for wages, will not be binding (*q*); and the fact that the agreement is under seal will make no difference in this respect (*r*).

(*o*) *R. v. Arnold* (1816), 5 M. & S. 257; *R. v. Chillesford* (1825), 4 B. & C. 102 (infant who enters into a contract of apprenticeship will be liable to the statutory regulations applicable to master and servant); *Wood v. Fenwick* (1842), 10 M. & W. 195: "There can be no doubt that, generally speaking, a contract for an infant to receive wages for his labour is binding upon him." In *Cooper v. Simmons* (1862), 7 H. & N. 707, Martin, B., and Wilde, B., state that a contract of service is binding on an infant unless it be manifestly not to his advantage. Must the contract, to be binding, be manifestly to the advantage of the infant, or is it binding unless it be manifestly to the prejudice of the infant? The rule is stated in the former way in *R. v. Wigston* (1824), 3 B. & C. 484, and in the latter way in *Cooper v. Simmons*, by Wilde, B. The tendency appears to be towards the latter principle. See the cases in note (*n*).

(*p*) *R. v. Lord* (1850), 12 Q. B. 757 (an infant bound for twelve months not to engage in any other service or business during the whole time; the master free to stop work and wages when he thought fit; the servant liable to be dismissed for misconduct or disobedience, and, in the event of dismissal, to forfeit his wages; contract held void). *Leslie v. Fitzpatrick* (1877), 3 Q. B. D. 229, where the Court of Queen's Bench refused to declare void a contract by which an infant undertook to serve as an iron shipbuilder for five years, at weekly wages, with a proviso that the employers, if they ceased to carry on business, or found it necessary to reduce their works, or in consequence of any accident, might terminate the contract at fourteen days' notice. "If such provisions," it was said by the Court, in a passage which seems to furnish the true rule, "were at the time common to labour contracts, or were in the then condition of the trade such as

the master was reasonably justified in imposing as a just measure of protection to himself, and if the wages were a fair compensation for the services of the youth, the contract is binding, inasmuch as it was beneficial to him by securing him permanent employment and the means of maintaining himself." But see *Birkin v. Forth* (1875), 33 L. T. (N. S.) 532, and the remarks of Coleridge, C. J., in *Meakin v. Morris* (1884), 12 Q. B. D. 352 (apprenticeship deed containing provision that, during turn-out, master should not pay wages, and the apprentice be free to work elsewhere, not enforced); followed in *Corn v. Matthews*, [1893] 1 Q. B. 310 (C. A.).

(*q*) Co. Litt. 172 a; Bacon's Abridg. "Infancy," I., 1, 356; *Ayliff v. Archdale*, Cro. Eliz. 920; *Russell v. Lee* (14 Ch. ii.), 1 Lev. 86; *Fisher v. Moubray* (1807), 8 East, 330 (infant not bound by bond bearing interest); *Baylis v. Dineley* (1815), 3 M. & S. 477; the judgment of Coleridge, C. J., in *Meakin v. Morris* (1884), 12 Q. B. D. 352; *Rhodes v. Swithenbank* (1889), 22 Q. B. D. 577 (infant, suing by next friend, non-suited; agreement by next friend that she would not appeal if costs were not asked for, held, not enforceable). See cases in note (*p*), *supra*. In *Jaek v. N. B. Rail. Co.* (1886), 14 R. 263, it was held that minors, having a cause of action for injuries by negligence, could give for consideration a valid discharge. As to an infant's capacity to give a valid receipt, see *Ledward v. Hassells* (1856), 2 K. & J. 370 (a legacy); and the remarks of James, L. J., in *Re Broeklebank* (1877), 6 Ch. D. 358. In *Stephens v. Dudbridge Ironworks Co.*, [1904] 2 K. B. 225, it was held that an infant who had given a receipt in full satisfaction of all claims under the Workmen's Compensation Act, 1897, was not barred thereby from proceeding subsequently in respect of the same injury at Common Law.

(*r*) *Walter v. Everard*, [1891] 2 Q. B. 369.

There is no reason why an infant should not be a master (*s*). An infant may enter into a contract of hiring and service with his father or mother (*t*). A father cannot bind his son apprentice without his consent, and the son must execute the indenture (*u*); and it has been usual to make the father or a friend of the infant a party to the deed. Parish apprentices were, in virtue of a special statute, exceptions to this rule (*x*). Apparently, an apprentice cannot be bound under seven years of age (*y*); in special cases the age is regulated by statute (*z*); if the statute be contravened the binding is void (*a*). A contract of apprenticeship is not invalid because it is made with a corporation (*b*).

An infant who is apprenticed cannot be sued upon the covenants in an indenture of apprenticeship, except by the custom of London (*c*), nor could the minor be sued at equity (*d*). But a master can recover upon a covenant from an apprentice the balance of a premium which in his indenture, made during infancy, the apprentice has covenanted to pay, on the ground that education is a necessary (*e*): and an infant is liable to suit and injunction upon the covenants in a contract of service which is beneficial to him (*f*).

(*s*) *Hands v. Slaney* (1800), 8 T. R. 578; *Chapple v. Cooper* (1844), 13 M. & W. 252, 258, where Alderson, B., held that in certain circumstances a servant would be a necessary for an infant; *R. v. St. Petro* (1791), 4 T. R. 196.

(*t*) *R. v. Chillesford* (1825), 4 B. & C. 94.
(*u*) *Rex v. Arnsby* (1820), 3 B. & A. 584; *Rex v. Ripon* (1808), 9 East, 295 (an adult apprentice). See Austin on *Apprentices*, 81.

(*x*) *R. v. Cromford* (1806), 8 East, 25; *R. v. Ripon* (1808), 9 East, 295; *St. Nicholas v. St. Botolph* (1862), 31 L. J. M. C. 258. Compulsory apprenticeship abolished, 7 & 8 Vict. c. 101, s. 13. An infant may have his name affixed to the indenture by an agent: *R. v. Longnor* (1833), 4 B. & Ad. 617.

(*y*) *R. v. Saltern* (1784), 1 Bott. 613.

(*z*) Parish apprentices and chimney sweeps: 3 & 4 Viet. c. 85, s. 3.

(*a*) *R. v. Hipsirell* (1828), 8 B. & C. 466.

(*b*) *Burnley Equitable Co-operative, &c. Society v. Casson*, [1891] 1 Q. B. 75.

(*c*) Bacon's Abridg., "Infamey," A, 340; *Gylbert v. Fletcher*, Cro. Car. 179; *Jennings v. Pitman* (19 Jac.), Hutton, 63; *Lyllly's Case* (1 Anne), 7 Mod. 16; *Stanton's Case* (25 Eliz.), Moore, 135; *Horn v. Chandler* (1670), 1 Mod. 271; nor will the Courts enforce the negative clauses in an apprenticeship deed against the apprentice by injunction: *De Francesco v. Barnum* (1889), 43 Ch. D. 165.

The custom of London, which was instituted for the promotion of trade, is stated in various ways. Thus, in *Burton v. Palaver* (11 James I.), 2 Buls. 191, "An infant within the age of fourteen years;" in *Walker v. Nicholson*, Cro. Eliz. 652, "Any infant above the age of twelve years;" in *Cole v. Holmes* (21 James I.), Palmer, 361, a person bound at fourteen, if the indenture be enrolled at Guildhall; in *Hall v. Chandler* (22 Chas. II.), 1 Mod. 271, "Any person above fourteen years, and under twenty-one, and unmarried;" so in *Edon's Case* (1813), 2 M. & S. 226 (a return held defective because it failed to state that an apprentice was between the age of fourteen and twenty-one). By the custom of London apprentices might be assigned, Viner's Abridg., "Apprentices," F. It is stated by Holt, C. J., in *Winton v. Wilkes* (4 Anne), 1 Salk. 204, that no other cities than London have such custom. See, however, T. Smith's *English Guilds*, 209. The custom does not extend to apprentices to watermen: *Barber v. Dennis* (2 Anne), 6 Mod. 69. By act of Common Council, March 14, 1889, the term for which the apprentice must serve was reduced from seven to four years.

(*d*) 1 Eq. C. Abridg. 6.

(*e*) *Walter v. Everard*, [1891] 2 Q. B. 369.

(*f*) *Fellows v. Wood* (1888), 59 L. T.

But apprentices have been always liable to certain statutory regulations (*g*), and the Employers and Workmen Act, 1875, states the procedure applicable to most classes of apprentices (*h*).

It is stated by Blackstone that a father may "have the benefit of his children's labour while they live with him, and are maintained by him; but this is no more than he is entitled to from his apprentices or servants" (*i*). The authorities in English reports and text-books on this subject are few (*k*). Blackstone cites none in support of his *dictum*, though probably it is correct. According to a series of decisions in the American Courts, the right to recover for the services of a minor is presumed to belong to the father, and

513; *Evans v. Ware*, [1892] 3 Ch. 502. And see *Cornwall v. Harkins* (1872), 41 L. J. Ch. 435 (where there was evidence of ratification after majority), and the remarks of Chitty, J., in *De Francesco v. Barnum* (1889), 43 Ch. D. at pp. 172, 174.

(*g*) *Ex parte Davis* (1794), 5 T. R. 715, decides that an infant, on coming of age, may disaffirm a contract of apprenticeship. This case is said in *Ex parte Gill* (1806), 7 East, 376, to have been misreported. It was, however, affirmed in *Wray v. West* (1866), 15 L. T. 180, where it was laid down that an infant must disaffirm his indentures within a reasonable time after coming of age. In *Moore v. Smith* (1875), 39 J. P. 772, the Court of Queen's Bench was asked to say whether this rule was altered by the Master and Servant Act, 1867; and decided that it was not. Nothing in the Employers and Workmen Act, 1875, apparently, affects the decision. It was early decided that an infant, though not liable to an action on the covenant of an indenture, was subject to the statutory regulations affecting apprentices; that is, to the 5 Eliz. c. 4. The contract of apprenticeship was treated as voidable. *R. v. St. Nicholas*, Bur. Sc. 91. What mere unequivocal way of avoiding such a contract than for an apprentice to run away from his master? Yet in *R. v. Evers*, 16 East, 27, and *Gray v. Cookson* (1812), 16 East, 13, this was held not to be an efficient election so as to avoid indentures, and prevent the justices punishing runaway apprentices under 20 Geo. II. c. 19, s. 4. The Courts were careful not to say that, in some way, an infant might not during infancy disaffirm a contract of apprenticeship. *Gray v. Cookson*, 16 East, p. 28; *R. v. Hindringham* (1796), 6 T. R. 558, and in such a manner as to make it wholly inoperative.

The decision in *Ex parte Davis*, *ubi sup.*, was not based on any statutes affecting apprentices, and was, no doubt, intended to lay down a principle of Common Law. But is the implication that an infant cannot disaffirm before coming of age correct? The cases seem to go no further than this—that an infant may disaffirm while under age, if it be for his advantage to do so. See Austin on *Apprentices*, p. 48. And see *R. v. Mountsorel* (1815), 3 M. & S. 497; *R. v. Great Wigston* (1824), 3 B. & C. 481, where Abbott, C. J., gives the reason that any other principle would involve a contradiction of the legal presumption that contracts of apprenticeship are beneficial to the infant. See Bacon's Abridg. "Infancy," 1, 2, 3, and 5; *Norry, &c. Rail. Co. v. Combe* (1849), 3 Ex. 565, per Parke, B., at p. 575; *London & North-Western Rail. Co. v. McMichael* (1850), 5 Ex. 114; *Dublin and Wicklow Rail. Co. v. Black* (1852), 8 Ex. 181.

(*h*) See sect. 12.

(*i*) 1 Com. 453. It is sometimes stated that the relation of father and child is like that of master and servant (*American and English Encyclopedia of Law*, vol. 11, 755). Apart from the Poor Laws, there is no obligation on the part of a father to maintain his child: *Mortimore v. Wright*, 6 M. & W. 482; *Bazeley v. Forder* (1868), L. R. 3 Q. B. at p. 565; *Cooper v. Martin* (1803), 4 East, 76.

(*k*) The chief authority on the subject of the right of a father to a child's earnings is *Ex parte Macklin* (1755), 2 Ves. Sen. 675. (Father received child's earnings while living with him. He became bankrupt; the child sought to prove for amount received from her. Hardwicke, C., referred to the Commissioners to inquire how much had been received to the child's use.)

he is entitled to the earnings of his children unless he has forfeited the right by misconduct or has expressly or by implication emancipated them (*l*). Accordingly payment of wages to a minor has been held to be no answer to an action by a father against an employer. "In consideration of this obligation on the part of the father to maintain his children," says Story, stating the effect of the American decisions, "the law gives him a right to all their earnings, and in case of his death the mother has the right" (*m*). This has been extended to adopted and illegitimate children. It is admitted in the American decisions (*n*), and presumably the same would hold good in the courts of this country, that the right does not exist where the father does not maintain his children or fulfil his duties as a father. The English authorities clearly show that emancipation will not be inferred merely from the fact that the son resides apart from his father and is in the service of another person (*o*). Thus, a son who left his father's house in Selborne, with his father's consent, and went to live in London, and entered the Metropolitan Police, was regarded as not emancipated. It is otherwise if a son enlists as a soldier and has no power to terminate his service (*p*).

The marriage of an apprentice without the master's consent does not dissolve the indentures. The master's remedy, if any, is on the covenants (*q*).

Jurisdiction over apprentices is given to Courts of Summary Jurisdiction by the Employers and Workmen Act, 1875 [see sects. 5—10, and 12] (*r*). For the procedure in these cases see the Summary Jurisdiction Rules, 1886, and the Employers and Workmen Rules, 1886. There is a right of appeal to Quarter Sessions.

There is also jurisdiction over apprentices in the City of London possessed by the City Chamberlain's Court and the Mayor's Court.

Another time-honoured and important duty of the Chamberlain is the exercise of his jurisdiction over City apprentices. He holds a Court, which

(*l*) Wood on *Master and Servant*, p. 22.

(*m*) *Contracts*, sect. 142.

(*n*) Which are more explicit than ours, and are collected in the *American and English Encyclopædia of Law*, vol. 14, 756; where it is stated that "a father may emancipate his child by refusing him support, or denying him a house, or compelling him to labour for his own living, as well as by selling his

time."

(*o*) *R. v. Selborne* (1859), 2 E. & E. 275; *R. v. St. Peter's* (1769), Bur. Se. 638.

(*p*) *R. v. Roach* (1795), 6 T. R. 247.

(*q*) Austin on *Apprentices*, p. 66.

(*r*) See this Act at p. 611, *infra*. By sect. 10, sub-s. (1), jurisdiction is given to the Lord Mayor's Police Courts at the Guildhall and Mansion House.

existed in the reign of Edward VI., for hearing and determining differences and disputes between them and their masters, and also complaints on the part of the masters themselves. The Court is at the present time constituted of the Chamberlain and the Comptroller of the Chamber (who is also Vice-Chamberlain) as judges. It is open all the year round except during the month of August. Summonses are granted on payment of a fee of 1s.; and counsel and solicitors may represent the parties as their "friends." An appeal lies to the Mayor's Court, when the case may be tried before the Recorder of London and a jury. According to ancient custom an unruly apprentice may be committed to Bridewell for a period not exceeding three months (usually seven or fourteen days) (s).

By sect. 96 of the County Courts Act, 1888, it is provided :—

It shall be lawful for any person under the age of twenty-one years to prosecute any action in the Court for any sum of money not greater than *one hundred* (3 Edw. VII. c. 42, s. 3) pounds which may be due to him for wages or piece-work, or for work as a servant, in the same manner as if he were of full age.

Several Acts of Parliament have imposed restrictions on the employment of children and "young persons," *e.g.* :—

Agricultural Gangs Act, 1867 (30 & 31 Vict. c. 130).

Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77).

Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58).

Mines (Prohibition of Child Labour Underground) Act, 1900 (63 & 64 Vict. c. 21).

Children's Dangerous Performances Act, 1879 (42 & 43 Vict. c. 34).

Shop Hours Act, 1892 (55 & 56 Vict. c. 62).

Factory and Workshop Act, 1901 (1 Edw. VII. c. 22).

Employment of Children Act, 1903 (3 Edw. VII. c. 45).

Prevention of Cruelty to Children Act, 1904 (4 Edw. VII. c. 15).

Elementary Education Acts.

These provisions are printed in Part II. of this book.

(s) City and County of London Amalgamation Commission, 1893; *Statement of Corporation*, p. 109. See Austin on *Apprentices*, pp. 110—112.

(B.)—**Married Women.**

A married woman could not at Common Law enter into a contract of hiring and service which would bind her (*l*); but she may now enter into such a contract so as to bind her separate estate (*u*).

At Common Law such a contract was “altogether void,” no action lying against her husband or herself for the breach of it. So an indenture purporting to bind an apprentice to a married woman was of no effect (*x*); she could not bind herself to perform the covenants; but since the Married Women’s Property Act, 1882, that disability has ceased to exist. The strictness of the rule is best seen by referring to *Ogpley v. Clay* (*y*), which was an action for work done by the wife of the plaintiff for the defendants at their request. Plea of payment to the wife in full satisfaction and discharge of the cause of action; held bad on demurrer, as it did not aver that the wife was authorised to receive. Notwithstanding the passing of the Married Women’s Property Act of 1870, which allowed a married woman to sue for her earnings in certain cases, it was held that she could not, without the consent of her husband, enter into a contract of service within the meaning of the Master and Servant Act, 1867 (30 & 31 Vict. c. 141) (*z*).

As the agent of her husband, a wife may contract obligations which will bind him. The question of authority is one of fact to be determined either by evidence of express authority or by circumstances showing implied authority (*a*). If that authority exist it will be derived not from the contract of marriage, but from the acts or words of the husband, or the circumstances or conduct of the parties. When a husband and wife live together, it may be said that there is a presumption that she has power to order or hire necessities on behalf of her husband; for example, to hire a servant suited to her station in life. This presumption,

(*l*) It is almost unnecessary to cite authorities for this elementary proposition. But see *Bidgood v. Way* (1778), 2 W. Bl. 1236; *Marshall v. Rutton* (1800), 8 T. R. 515; *Lambert v. Atkins* (1809), 2 Camp. 272; *Liverpool Adelpbi Loan Association v. Fairhurst* (1854), 9 Ex. 422.

(*u*) See 45 & 46 Vict. c. 75, s. 1.

(*x*) *R. v. Guildford* (1818), 2 Chitty, 281.

(*y*) (1840), 2 M. & G. 172.

(*z*) *Tomkinson v. West* (1875), 32 L. T. 462; *Hodkinson v. Green* (1875), Davis’s *Labour Laws*, 119; 39 J. P. 600.

(*a*) Notes to *Manby v. Scott*, 2 Smith, L. C., 11th ed. 446.

however, is not irrebuttable; it is destroyed by showing that the authority did not in fact exist, or that it was withdrawn. The late Lord Selborne thus states the true principle (*b*) :—

The first question . . . is, whether the mere fact of marriage implies a mandate by law making the wife . . . the agent in law of her husband, to bind him, and to pledge his credit, by what otherwise would have been her own contract, if she had been a *feme sole*. . . . According to all the authorities there is no such mandate in law from the fact of marriage only, except in the particular case of necessity, a necessity which may arise, when the husband has deserted the wife, or has by his conduct compelled her to live apart from him, without properly providing for her,—but not when the husband and wife are living together, and when the wife is properly maintained. . . . I pass to the next question: whether the law implies a mandate to the wife from the fact, not of marriage, but of cohabitation? There are, no doubt, various authorities, which show that the ordinary state of cohabitation between husband and wife does carry with it some presumption, some *prima facie* evidence, of an authority to do those things, which, in such ordinary circumstances of cohabitation, it is usual for a wife to do; . . . because, in that state of circumstances, the husband may be truly said to do acts, or habitually to consent to acts, which hold the wife out as his agent for certain purposes. . . . But when there has been nothing done, nothing consented to, by the husband to justify the proposition that he has ever held out the wife as his agent, I apprehend that the question whether, as a matter of fact, he has given the wife authority, must be examined on the whole circumstances of the case. No doubt, though not intending to hold her out as his agent, and though she may not actually have had authority, the husband may have so conducted himself as to entitle a tradesman dealing with her to rely upon some appearance of authority for which the husband ought to be held responsible. If he has so acted he may be bound, but the question must be examined as one of fact, . . . not a presumption of law, but one capable of being rebutted.

If a wife were permitted by her husband to carry on a trade or business, she would be regarded as having authority to enter into all contracts, including those of hiring and service, necessary for the conduct of the business (*c*).

(*b*) *Debenham v. Mellon* (1880), 6 A. C. 24, at pp. 31, 32. In this case it was held that a husband cohabiting with his wife who is able and willing to supply his wife with necessaries, and who has forbidden her to pledge his credit is not liable for necessaries ordered by her, even when the tradesman who supplied them had no knowledge of the prohibition: *Johnston v. Sumner* (1858), 3 H. & N. 261; *Morrell v. Westmoreland*, [1904] A. C. 11. Necessaries would include hiring servants reasonably fit for her degree. *Blackburn, J.*, in *Bazley v. Forder* (1868), L. R. 3 Q. B. 559, 563;

and *White v. Cuyler* (1795), 6 T. R. 176; 1 Esp. 200. The head note in the T. R., "if a *feme covert* without any authority from her husband contract with a servant by deed, the servant having performed the service stipulated may maintain assumpsit against the husband," is misleading. It appears in the report of *Espinasse* that the deed was used as evidence of a contract which the wife would be authorised to make. See *Lush's Husband and Wife* (2nd ed.), pp. 392, 393.

(*c*) *Phillipson v. Hayter* (1870), L. R. 6 C. P. 38. As to the custom of London

Equity early recognised a wife's right to deal freely with her separate estate as if she were unmarried, and she might no doubt hire servants so as to bind it. Legislation has much extended the power of married women in regard to service and earnings.

By the Divorce Acts, 1857 (20 & 21 Vict. c. 85) and 1858 (21 & 22 Vict. c. 108), a wife, who, having been deserted by her husband (*d*), has obtained a protection order under the principal Act, or who is judicially separated from her husband, possesses nearly the same rights of property, and occupies much the same position in respect of contract and tort, as a married woman under the 45 & 46 Vict. c. 75 (*e*).

It is necessary to refer here also to the Married Women's Property Act of 1870 (33 & 34 Vict. c. 93) and the Amendment Act of 1874 (37 & 38 Vict. c. 50). The Act of 1870 (sect. 1) was to this effect:—

The wages and earnings of any married woman acquired or gained by her after the passing of this Act in any employment, occupation, or trade in which she is engaged, or which she carries on separately from her husband, and also any money or property so acquired by her through the exercise of any literary, artistic, or scientific skill, and all investments of such wages, earnings, money, or property, shall be deemed and taken to be property held and settled to her separate use, independent of any husband to whom she may be married, and her receipts alone shall be a good discharge for such wages, earnings, money and property.

Both of the above Acts are, saving their application in certain cases, repealed by the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 22. This last-mentioned Act provides as follows:—

1. (1.) A married woman shall, in accordance with the provisions of this Act, be capable of acquiring, holding and disposing by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a *feme sole*, without the intervention of any trustee.

(2.) A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any

by which a married woman trading on her own account may be charged as a *feme sole* on contracts concerning her business, see *Lavie v. Phillips* (1765), 3 Burr. 1776.

(*d*) Absence of a husband in his ordinary occupation is not desertion, *Ex parte Aldridge* (1858), 1 S. & T. 88. The wife must not be a consenting party to the cessation of cohabitation, *Thompson v. Thompson* (1858), 27 L. J. P. & M.

65. See also *Yeatman v. Yeatman* (1868), L. R. 1 P. & D. 489.

(*e*) The limitation to property acquired "by lawful industry," (see *Mason v. Mitchell* (1865), 34 L. J. Ex. 68) is omitted in the Act of 1882. The property, in cases of the wife's intestacy, devolves differently under the Act of 1857 and that of 1882. See Lush's *Husband and Wife* (2nd ed.), p. 123.

contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise.

(5.) Every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a *feme sole*.

2. Every woman who marries after the commencement of this Act shall be entitled to have and to hold as her separate property and to dispose of in manner aforesaid all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money and property gained or acquired by her in any employment, trade, or occupation in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill.

5. Every woman married before the commencement of this Act shall be entitled to have and to hold and to dispose of in manner aforesaid as her separate property all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of this Act, including any wages, earnings, money and property so gained or acquired by her as aforesaid.

12. Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also (subject, as regards her husband, to the proviso hereinafter contained) the same remedies and redress by way of criminal proceedings, for the protection and security of her own separate property, as if such property belonged to her as a *feme sole*, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort. In any indictment or other proceeding under this section it shall be sufficient to allege such property to be her property; and in any proceeding under this section a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding: Provided always, that no criminal proceeding shall be taken by any wife against her husband by virtue of this Act while they are living together, as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife.

13. A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted, and all contracts entered into or wrongs committed by her before her marriage, including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories, under and by virtue of the Acts relating to joint stock companies; and she may be sued for any such

debt and for any liability in damages or otherwise under any such contract, or in respect of any such wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property; and, as between her and her husband, unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts, or wrongs, and for all damages or costs recovered in respect thereof: Provided always, that nothing in this Act shall operate to increase or diminish the liability of any woman married before the commencement of this Act, for any such debt, contract, or wrong, as aforesaid, except as to any separate property to which she may become entitled by virtue of this Act, and to which she would not have been entitled for her separate use under the Acts hereby repealed or otherwise, if this Act had not passed.

14. A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her, before marriage, including any liabilities to which she may be so subject under the Acts relating to joint stock companies as aforesaid, to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payments made by him, and any sums for which judgment may have been *bonâ fide* recovered against him in any proceeding at law, in respect of any such debts, contracts, or wrongs for or in respect of which his wife was liable before her marriage as aforesaid; but he shall not be liable for the same any further or otherwise; and any Court in which a husband shall be sued for any such debt shall have power to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount, or value of such property: Provided always, that nothing in this Act contained shall operate to increase or diminish the liability of any husband married before the commencement of this Act for or in respect of any such debt or other liability of his wife aforesaid.

15. A husband and wife may be jointly sued in respect of any such debt or other liability (whether by contract or for any wrong) contracted or incurred by the wife before marriage as aforesaid, if the plaintiff in the action shall seek to establish his claim, either wholly or in part, against both of them; and if in any such action, or in any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him or to which he shall have become so entitled as aforesaid, he shall have judgment for his costs of defence, whatever may be the result of the action against the wife if jointly sued with him; and in any such action against husband and wife jointly, if it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property; and as to the residue, if any, of such debt and damages, the judgment shall be a separate judgment against the wife as to her separate property only.

16. A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to property of the wife, would

make the husband liable to criminal proceedings by the wife under this Act, shall in like manner be liable to criminal proceedings by her husband.

19. Nothing in this Act contained shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman, or shall interfere with or render inoperative any restriction against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will, or other instrument; but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors.

21. A married woman having separate property shall be subject to all such liability for the maintenance of her children and grandchildren as the husband is now by law subject to for the maintenance of her children and grandchildren: Provided always, that nothing in this Act shall relieve her husband from any liability imposed upon him by law to maintain her children or grandchildren.

22. The Married Women's Property Act, 1870, and the Married Women's Property Act, 1870, Amendment Act, 1874, are hereby repealed: Provided that such repeal shall not affect any act done or right acquired while either of such Acts was in force, or any right or liability of any husband or wife, married before the commencement of this Act, to sue or be sued under the provisions of the said repealed Acts or either of them, for or in respect of any debt, contract, wrong, or other matter or thing whatsoever, for or in respect of which any such right or liability shall have accrued to or against such husband or wife before the commencement of this Act.

23. For the purposes of this Act the legal personal representative of any married woman shall in respect of her separate estate have the same rights and liabilities and be subject to the same jurisdiction as she would be if she were living.

24. The word "property" in this Act includes a thing in action.

The Married Women's Property Act, 1893, repeals (by sect. 4) sect. 1, sub-ss. (3) and (4), of the Act of 1882, and, by its first section, enacts as follows:—

1. Every contract hereafter (*f*) entered into by a married woman otherwise than as agent—

(a) shall be deemed to be a contract entered into by her with respect to and to bind her separate property whether she is or is not in fact possessed of or entitled to any separate property at the time when she enters into such contract;

(*f*) *Scil.*, after Dec. 5, 1893.

(b) shall bind all separate property which she may at that time or thereafter be possessed of or entitled to; and

(c) shall also be enforceable by process of law against all property which she may thereafter while discoverd be possessed of or entitled to;

Provided that nothing in this section contained shall render available, to satisfy any liability or obligation arising out of such contract, any separate property which at that time or thereafter she is restrained from anticipating.

SECT. 2 makes property on which there is a restraint from anticipation liable in certain cases for costs.

The result of this legislation is, that a married woman is—apart from the power to contract as agent for a third person which she has always possessed—capable of binding, and is presumed to bind, herself to the extent of her separate property by her own contracts; the right acquired against her is “proprietary,” as it is called, not personal (*g*). Under the Act of 1882 it was held that it was necessary to allege and prove that the married woman, at the time she made the contract, possessed separate property (*h*), and that of such a kind as she might be reasonably expected to have contracted in respect of it (*i*). The Act of 1893 has changed this by sect. 1, sub-s. (a). Sect. 1, sub-s. (b), would appear to have left the law as it was. A creditor could not, before the Act of 1893, satisfy a judgment, obtained against a married woman on a contract made during coverture, out of property which she acquired after the death of her husband: sect. 1, sub-s. (c), of that Act has removed that disability. With regard to her torts, a married woman is liable to the extent of any separate property she may, at any time, have (*k*).

If a woman who is a party to a contract of service marries, the marriage will not dissolve the contract, and is no excuse for her leaving service (*l*).

Legislation has restricted the employment of married women (*m*).

(*g*) *Palliser v. Gurney* (1886), 19 Q. B. D. 519; *Scott v. Morley* (1887), 20 Q. B. D. 120. The nature of the liability would seem to be unaltered by the Act of 1893.

(*h*) *Palliser v. Gurney*, *ubi sup.*; *Stogdon v. Lee*, [1891] 1 Q. B. 661.

(*i*) *Braunstein v. Lewis* (1891), 65 L. T. 449.

(*k*) Of course she can still as agent or servant make third parties liable. See

Miell v. English (1866), 15 L. T. 249. It has been held that under the Act of 1882 the husband is still liable to be sued with the wife: *Seroka v. Kattenburg* (1886), 17 Q. B. D. 177.

(*l*) Burn's *Justice*, V., 222, 30th ed.; *R. v. Tardebigg* (1753), Sayer, 100; S.C., *Burr. Sett. Cases*, 322; *Chitty's General Practice*, 3rd ed., 77 a; Fitzherbert, 168, N.

(*m*) See *Factory and Workshop Act*, 1901 (1 Edw. VII. c. 22).

(C.)—Lunatics.

A contract of hiring and service entered into by a lunatic is binding unless the fact of insanity be known to the person contracting with the lunatic.

Some of the older authorities state that the acts of a lunatic are wholly void (*n*). But modern cases seem to have laid down the doctrine stated above (*o*).

A lunatic may be bound by contracts for necessities, including services suitable to his rank and station (*p*).

(D.)—Partnerships.

A partner has implied authority to hire servants for the purposes of the partnership, unless the person with whom he is dealing knows that he has no authority, or does not know or believe him to be a partner (*q*).

(*n*) See Holt, C. J., in *Thomson v. Leech* (9 Will. III.), 3 Salk. 301; see also Carth. 483, and cases cited in *Molton v. Camroux*.

(*o*) *Molton v. Camroux* (1848), 4 Ex. 17; *Imperial Loan Co. v. Stone*, [1892] 1 Q. B. 599, which would seem to render immaterial the distinction drawn in *Molton v. Camroux* between executed and executory contracts and its consequences. See also *Bevan v. McDonnell* (1854), 9 Ex. 309; *Lovatt v. Tribe* (1862), 3 F. & F. 9; *Hassard v. Smith* (1872), 6 Ir. Eq. 429. As to contract made by wife of a lunatic, see *Drew v. Nunn* (1879), 4 Q. B. D. 661. (Defendant authorized his wife to deal with the plaintiff and pledge his credit; defendant subsequently became insane; held liable for goods ordered by her during his insanity, the plaintiff not having had notice of the defendant's insanity.) *Richardson v. Dubois* (1869), L. R. 5 Q. B. 51. (Action against lunatic for

necessary repairs done to his house at the request of his wife; plaintiff knew of defendant's lunacy; his wife received a sufficient allowance to provide all necessities; no cause of action.)

(*p*) *Baxter v. Earl of Portsmouth* (1826), 5 B. & C. 170. (Tradesman supplying a lunatic with carriages suitable to his station.) And see also *Brown v. Jodrell* (1827), 3 C. & P. 30. As to contracts with drunken persons, *Gore v. Gibson* (1845), 13 M. & W. 623; *Matthews v. Baxter* (1873), L. R. 8 Ex. 132.

(*q*) Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 5; and see sect. 9. See also sect. 8 as to the effect of notice of a restrictive agreement between partners. *Beckham v. Drake* (1841), 9 M. & W. 79. (A dormant partner held liable on a contract not signed by him, by which the plaintiff was hired for seven years.) In *R. v. Leech* (1821), 3 Stark. 70, it was held that a servant in the employ-

One partner would have power to discharge a servant, though not, of course, against the will of his co-partners (*v*).

(E.)—Corporations.

Contracts of hiring and service by corporations must be under seal, if the contracts be of an unusual or important character (*s*). Contracts of hiring and service, in the case of trading companies, need not be under seal.

“The seal is required,” as Rolfe, B., explains in *Mayor of Ludlow v. Charlton* (*l*), “as authenticating the concurrence of the whole body corporate.” The principle that a seal must be used in contracts is stated in unqualified terms in some ancient authorities (*u*); but it has been subjected to important exceptions, the exact limits of which are not easily determined. The following exceptions, however, seem to be established:—

(1.) Contracts of trading companies entered into for the purposes for which they are established need not be under seal. This exception is now clearly recognised (*x*); and it would seem that the old rule is obsolete so far as trading companies are concerned. Actions

ment of a firm is, for the purpose of description in an indictment for the larceny of the separate property of one of the partners, the servant of each of the partners.

(*r*) In *Dixon on Partnership*, p. 139, the law is thus stated: “As a partner may hire servants, so he may dismiss them if the other partners do not forbid; and even if they do forbid it, it is conceived that, at least as against the servant, a valid dismissal could be effected.” See *Lindley on Partnership* (6th ed.), 157. In *Donaldson v. Williams* (1833), 1 Cr. & M. 345, it was held that one of two partners, joint tenants of a house where their business was carried on, had a right to authorise a weekly tenant to remain in the house, though the other partner had given him a week’s notice to leave the service of the firm, and that it would be lawful for the

servant to remain in consequence of such authority. If a servant is injured by reason of the negligence of one partner within the scope of the partnership, the other will be liable also: *Ashworth v. Stanwix* (1861), 30 L. J. Q. B. 183. And see sects. 10 and 12 of the Partnership Act, 1890.

(*s*) See generally as to contracts of corporations, *Bacon’s Abridg.*, “Corporations,” E. 3, and *Viner’s Abridg.*, “Corporations,” K. The rule held good in equity as well as at law: *Winne v. Bampton* (1747), 3 Atk. 473. As to the fraudulent affixing of a seal or sealing without delivery, see *Staple of England v. Bank of England* (1887), 21 Q. B. D. 160.

(*t*) (1840), 6 M. & W. 815.

(*u*) For example, 13 Hen. VIII., f. 12.

(*x*) Rolfe, B., in *Mayor of Ludlow v. Charlton*, see note (*l*).

by a gas company for the supply of gas (*y*), by a colliery company (*z*) against an engineer who had agreed to erect pumping engines, by a trading company on a parol agreement to supply provisions for a passenger ship (*a*), and for the supply of goods against a company having power to purchase goods (*b*), were held to be maintainable, though the contracts were not under seal. "These exceptions," said Bovill, C. J., in *South of Ireland Colliery Co. v. Waddle* (*c*), "apply to all contracts by trading corporations entered into for the purposes for which they are incorporated."

(2.) When a contract is partly executed in such circumstances that the equitable doctrine of part performance would apply, and is of such a nature as to be the subject of an action for specific performance, it will bind a corporation, though it be not under seal.

This description of a class of cases, which it is exceedingly hard to define, is taken from the judgment of Lindley, J., in *Hunt v. Wimbledon Local Board* (*d*). It was once supposed that a clear distinction existed between executory and executed contracts, corporations being not liable under the former if the contracts were not under seal, while they were liable for the latter.

This distinction, which is approved of in *East London Waterworks v. Bailey* (*e*), is no longer recognised. It has been decided that a person who enters upon and pays rent for corporate property, under a demise for years, made on behalf of a corporation, but not under their corporate seal, becomes tenant from year to year (*f*); and in the view of Kelly, C. B., when a person so contracts with a corporation by parol that the contract is enforceable in equity against it, the other party is bound by any stipulation made by him in consideration of the liability so imposed upon the corporation (*g*). That the parol contracts of corporations, which have been acted upon, will sometimes be enforced in favour

(*y*) *Beverley v. The Lincoln Gas Co.* (1837), 6 A. & E. 829.

(*z*) *South of Ireland Colliery Co. v. Waddle* (1868), L. R. 3 C. P. 463; L. R. 4 C. P. 617.

(*a*) *Australian Royal Mail Co. v. Marzetti* (1855), 11 Ex. 228.

(*b*) *In re Contract Co.*, claim of *Ebbw Vale Co.* (1869), 8 Eq. 14.

(*c*) See note (*z*), and remarks of Lindley, J., in *Hunt v. Wimbledon Board*, note (*d*). In *Crampton v. The Farna Rail. Co.* (1872), 7 Ch. Ap. 562, an

action by a contractor on a contract not under seal was held not maintainable in equity. But the statutes of the company expressly provided that all contracts for more than 500*l.* should have the common seal affixed to them.

(*d*) (1878), 3 C. P. D. 208, 214.

(*e*) (1827), 4 Bing. 283. See remarks of Martin, B., in *Dyde v. St. Pancras Guardians* (1872), 27 L. T. 342.

(*f*) *Ecclesiastical Commissioners v. Merral* (1869), L. R. 4 Ex. 162.

(*g*) *l. c.* at p. 166.

of and against them, seems clear from *Marshall v. Corporation of Queenborough* (*h*), *Steeven's Hospital v. Dyas* (*i*), and other authorities. But the limitations of this exception are far from certain (*k*).

(3.) Corporations of all kinds may enter into binding contracts not under seal, or they may give orders by which they will be bound, if they relate to matters of trifling importance or frequent occurrence, or transactions in which it would be impossible or highly inconvenient to make use of a seal (*l*).

Apparently, from the earliest times, this exception has existed. The Year Books show that the judges were not at one as to the limit or the reasons of the exception (*m*). But it has long been the unquestioned right of corporations, or at all events such of them as had heads, to engage subordinate servants without the use of a deed. Thus, a cook or a butler, or a ploughman, might be engaged by parol.

(4.) Corporations will be held liable upon an implied contract to pay, in the case of contracts not under seal, where the consideration has been executed and the benefit accepted (*n*).

Unions and Guardians of Poor.

By the 5 & 6 Will. IV. c. 69, s. 7, and 5 & 6 Vict. c. 57, s. 16, Guardians of the Poor are made corporations. They are liable on all contracts of trifling consequence, and of frequent occurrence, whether under seal or not, as is illustrated by *Clarke v. The Cuckfield*

(*h*) (1823), 1 Sim. & St. 520.

(*i*) (1863), 15 Ir. Ch. 405.

(*k*) See judgment of Bramwell, L. J., and Brett, L. J., in *Hunt v. Wimbledon Local Board* (1878), 4 C. P. D. 48; approved by the House of Lords in *Young v. Corporation of Leamington* (1883), 8 A. C. 517. And see *Scott v. Clifton School Board* (1884), 14 Q. B. D. 500, where Mathew, J. (p. 503), in giving judgment for the plaintiff on a contract not under seal, treats the adoption of the benefits of the contract by the defendants as evidence of the necessary character of the work done.

(*l*) This is recognised in many cases; for example, *Mayor of Ludlow v. Charlton* (1840), 6 M. & W. 815.

(*m*) In 4 Hen. VII. f. 61, the reason given by Townsend, J., is "these things do not require to be by deed, for other-

wise there would be many deeds." In 4 Hen. VII. f. 17, and 7 Hen. VII. f. 9, the rule is justified in the case of the employment of servants, "because there is nothing divested out of their (the corporation's) possession." See also *Horn v. Ivy* (1669), 1 Ventris, 47.

(*n*) *Clarke v. Cuckfield Union* (1852), 21 L. J. Q. B., per Wightman, J., at p. 354; *Laceford v. Billericay Rural Council*, [1903] 1 K. B. 772 (services rendered by an engineer at defendants' request); but not where the seal is made obligatory by statute: *Young v. Mayor, &c. of Leamington Spa* (1883), 8 A. C. 517. Perhaps there ought to be a fifth division including cases of utility amounting to necessity. See Wightman, J., in *Clarke v. Cuckfield Union* (1852), 21 L. J. Q. B. 319; *Scott v. Clifton School Board* (1884), 14 Q. B. D. 500.

Union (o), and *Nicholson v. The Bradfield Union (p)*; but all contracts of importance, or of an unusual character, should be under seal. Claims for making a plan of the parishes of a union (*q*) have been disallowed when the contracts were not under seal (*r*).

Municipal Corporations.

They are not, like trading companies, wholly exempt from the operation of the rule of common law, that contracts of corporations must be under seal. They may, no doubt, engage by parol a door-keeper, for example, or enter into a binding contract for some unimportant purpose, or relating to a matter of constant occurrence; but the authorities cited below show that they cannot appoint a solicitor, or conclude any other contract of a special and unusual character, without employing the corporate seal (*s*). But

(*o*) (1852), 21 L. J. Q. B. 349. Contracts with tradesmen not under seal to put up certain water-closets in connection with workhouse; guardians liable: explained and followed in *Laurford v. Billericay Rural Council*, [1903] 1 K. B. 772. See note (*n*).

(*p*) (1866), L. R. 1 Q. B. 620. Defendants held liable for price of coals supplied by plaintiff under contract not under seal.

(*q*) *Paine v. The Strand Union* (1846), 8 Q. B. 326.

(*r*) The other chief cases on the subject are these: *Sanders v. St. Neots Union* (1846), 8 Q. B. 810. (Action lies for iron gates supplied to defendants and accepted, though contract not under seal.) *Lamprell v. Billericay Union* (1849), 3 Ex. 283. (Action for extra work by a builder; defendants not liable, the order not being under seal.) *Smart v. The West Ham Union* (1855 and 1856), 11 Ex. 867. (Guardians appointed plaintiff collector of poor rates, not under seal, to be paid by a certain poundage; action for unpaid poundage not maintainable.) *Haigh v. The North Bierley Union* (1858), E. B. & E. 873. (Accountant employed by guardians to audit accounts of the union; held that plaintiff could recover for his services, the work being incidental to the purposes for which the corporation was created.) *Dyde v. St. Pancras Guardians* (1872), 27 L. T. 342. (Resolution passed by Infirmary Committee, and approved by defendants also by resolution, that plaintiff be appointed medical officer for three months; plaintiff entered upon his duties, and performed them for three months; contract

not under seal; no action lay.) Some of the reasons given, *e.g.*, the reasons given by Martin, B., seem not sustainable. *Austin v. Bethnal Green Union* (1874), L. R. 9 C. P. 91. (Appointment of a clerk to workhouse; no action lay, because appointment not under seal.)

(*s*) *Mayor of Ludlow v. Charlton* (1840), 6 M. & W. 815; *Arnold v. Mayor of Poole* (1842), 4 M. & G. 860. (An attorney could not succeed in an action for work and labour in opposing certain bills in Parliament in pursuance of instructions from mayor and members of town council, the contract not being under seal.) But see *Fariell v. E. C. R. Co.* (1848), 2 Ex. 344. *R. v. Mayor of Stamford* (1844), 6 Q. B. 433. (Resolution to increase town clerk's salary in lieu of compensation; such a contract must be under seal.) *R. v. Lichfield* (1843), 4 Q. B. 893. (A resolution of the town council sufficient authority to warrant payment of costs to attorney.) *Smith v. Cartwright* (1851), 6 Ex. 927. (Plaintiff sued as coal meter of King's Lynn. His appointment not under seal, but evidence of it by entry in books of the corporation; held that, not being a servant but an officer of the corporation, he could not be appointed without deed.) See, however, *Thames Haven Co. v. Hall* (1843), 5 M. & G. 274, and *R. v. Justices of Cumberland* (1847), 17 L. J. Q. B. 102. *Mayor of Kidderminster v. Hardwick* (1873), L. R. 9 Ex. 13. (Contract by plaintiffs letting certain tolls, not under seal; not binding on defendant, the highest bidder.) *Clemenshaw v. Corporation of Dublin* (1875), 10 Ir. C. L. 1. (Defendants employed plaintiff to pro-

they will be held liable to pay for work done at their request upon a contract to pay implied from the execution of the work and the acceptance of the benefit (*l*). It is needless to say that, while between the master and servant this holds good, a servant so improperly appointed may, as regards third persons, bind a corporation.

Local Boards and Urban Authorities.

The Public Health Act, 1875 (*u*), by s. 174, enacts that with respect to contracts made by an urban authority under this Act, the following regulations should be observed, viz.:—“(1.) Every contract made by an urban authority whereof the value or amount exceeds 50*l.* shall be in writing and sealed with the common seal of such authority: (2.) Every such contract shall specify the work materials matters or things to be furnished had or done, the price to be paid, and the time or times within which the contract is to be performed, and shall specify some pecuniary penalty to be paid, in case the terms of the contract are not duly performed: (3.) Before contracting for the execution of any works under the provisions of this Act, an urban authority shall obtain from their surveyor an estimate in writing,” &c., as to the probable expenses and annual repairs: (4.) “Before any contract of the value or amount of 100*l.* or upwards is entered into by an urban authority ten days’ public notice at the least shall be given, expressing the nature and purpose thereof and inviting tenders for the execution of the same; and such authority shall require and take sufficient security for the due performance of the same: (5.) Every contract entered into by an urban authority in conformity with the provisions of this section, and duly executed by the other parties thereto, shall be binding on the authority by whom the same is executed, and their successors and on all other parties thereto and their executors administrators successors or assigns to all intents and purposes,” &c.

So much of this section as relates to sealing is not directory only; it is imperative. Hence, when a local board—an urban authority under the Public Health Act, 1848, and the Public

mote a bill in Parliament to enable defendants to purchase gas works and become vendors of gas; contract not under seal; not binding.) This last case mainly turned on a question of *ultra vires*.

(*l*) *Lauford v. Billericay, &c.*, [1903] 1 K. B. 772.

(*u*) As to London, see Metropolitan Management Act, 1855 (18 & 19 Vict. c. 120), s. 149, and Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 40, 79.

Health Act, 1875,—verbally directed their surveyor to employ the plaintiff, an architect, to prepare plans for new offices, it was held by the Court of Appeal, that the contract could not be enforced, owing to non-compliance with the statutory requirements; although the jury found that the local board had authorised their surveyor to procure the plans, and ratified his acts, that the new offices were necessary for the purposes of the defendants, and that the plaintiff's plans were necessary for the erection of the buildings (*x*).

Contracts by Companies under the Limited Liability Companies Acts.

By Table A. (55), the business of a company under the Companies Act, 1862, shall be managed by the directors. They may exercise all such powers of the company as are not required by the Act or Articles of Association to be exercised by the company or by general meeting, and may do all acts (including the hiring of servants) reasonably necessary for the business of the company.

The 37th section of the Companies Act, 1867, enacts:—

Contracts on behalf of any company under the principal Act may be made as follows: (that is to say); (1.) Any contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company, and such contract may be in the same manner varied or discharged.

(2.) Any contract which if made between private persons would be by law required to be in writing, and signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under the express or implied authority of the company, and such contract may in the same manner be varied or discharged.

(3.) Any contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company, and such contract may in the same way be varied or discharged. And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company, and their successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be.

(*x*) *Hunt v. Wimbledon Local Board* (1878), 4 C. P. D. 48; *Young v. Corporation of Leamington* (1883), 8 A. C.

517 (where the work had been executed and the benefit adopted).

Companies under the Companies Clauses Consolidation Act, 1845.

The 8 & 9 Vict. c. 16, s. 97, enacts as follows :—

With respect to any contract which, if made between private persons, would be by law required to be in writing, and under seal, such committee [see sect. 95] or the directors, may make such contract on behalf of the company in writing, and under the common seal of the company, and in the same manner may vary or discharge the same :

With respect to any contract which, if made between private persons, would be by law required to be in writing, and signed by the parties to be charged therewith, then such committee or the directors may make such contract on behalf of the company in writing, signed by such committee, or any two of them, or any two of the directors, and in the same manner may vary or discharge the same :

With respect to any contract which, if made between private persons, would be by law be valid although made by parol only, and not reduced into writing, such committee or the directors may make such contract on behalf of the company by parol only, without writing, and in the same manner may vary or discharge the same (y).

(y) See *Bill v. Darent Valley Rail. Co.* (1856), 1 H. & N. 305, as to secretary suing for salary which had not been determined at a general meeting in accordance with the 91st section. A

contract binding in itself does not carry with it an authority to execute extra works : *Honersham v. Wolverhampton Waterworks Co.* (1851), 6 Ex. 137.

CHAPTER VI.

FORMALITIES OF THE CONTRACT.

A CONTRACT of hiring and service to be completed within a year need not be in writing; if not to be so completed, it must be in writing (*a*).

At Common Law a verbal promise for good consideration sufficed to create a contract of hiring and service; and no particular form of words was required (*b*). Indeed, it is possible and common to conclude contracts of hiring and service without expressing the whole of the terms orally; some of the terms are implied. The parties must be at one; the terms must be fixed; there must, in short, be an agreement (*c*). The payment of "earnest" or "fastening money," for example, will often suffice. The Common Law, however, is qualified by the 4th section of the Statute of Frauds, which provides that:—

No action shall be brought upon any agreement that is not to be performed within the space of one year from the making thereof unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised.

"No action shall be brought," are the words of the statute, which, apparently, does not make a verbal contract absolutely void, but

(*a*) *Beeston v. Collyer* (1827), 4 Bing. 309; Chitty on *Contracts*, 13th ed. 103-4; 29 Car. 2, c. 3, s. 4.

(*b*) *Beeston v. Collyer*, see note (*a*).

(*c*) *Johnson v. Appleby* (1874), L. R. 9 C. P. 158. The plaintiff proposed to enter the service of defendant and wrote as follows: "Referring to my conversation with you, I have now the pleasure to state my willingness to enter the service of your firm for one year on trial on the following terms, viz., a list of the merchants to be regularly called on by me to be made and corrected as occasion requires. My salary for the

year to be 120*l.*, &c. If the terms herein specified are in accordance with your ideas, kindly confirm them by return, and I will then prepare to enter on my duties at your warehouse on Monday morning next." The defendants wrote: "Yours of yesterday embodies the substance of our conversation and terms. If we can define some of the terms a little clearer, it might prevent mistakes; but I think we are quite agreed on all." *Held*:—that evidence of a custom to dismiss salesmen at a month's notice was admissible, there being no complete contract.

prevents an action being brought upon it (*d*). It has, however, been held that an agreement of hiring and service not to be performed within a year, and not committed to writing, could not be enforced by criminal process under the repealed Master and Servant Act, 1867 (*e*). The Statute of Frauds, it may be added, only applies to contracts which on the face of them show that they cannot be performed within a year. It does not extend to cases in which it is improbable that the contract will be completed within that time, or in which the performance of the contract has, in point of fact, taken more than a year, if it might be performed within the year, and there be no stipulation to the contrary (*f*). An agreement for a longer term than a year, but liable to be determined on a contingency which may happen within the year, is within the statute, and must be in writing; for example, an agreement to let and hire a carriage for five years, but liable by custom to be determined at any time on payment of a year's hire (*g*). The manner in which the Courts have construed this section will be understood from the following illustrations:—

A. verbally agreed on the 27th of May with B. to take B. into his service as groom and gardener for a year, to commence on the 30th of June next. No action could be brought (*h*).

A. delivered to B. on the 20th of July a memorandum in writing which was unsigned, and which contained proposal, and terms as to B. entering A.'s service for a year. B. entered A.'s service on the 24th of July next, and was discharged before the end of the year. No action lay for not continuing B. in A.'s service (*i*).

Verbal agreement on the 2nd of October, 1854, between A. and B. that A. should employ B. as a traveller, until the 1st of September, 1855, and for a

(*d*) *Leroux v. Brown* (1852), 12 C. B. 801. But see Willes, J., in *Williams v. Wheeler* (1860), 8 C. B. N. S. 316.

(*e*) *Banks v. Crossland* (1874), L. R. 10 Q. B. 97. Lush, J., based his decision on the fact that under the 4 Geo. IV. c. 34, s. 3, a contract of service, in order to be enforced must be in writing, or the servant must have entered into service, and that the Act of 1867 extended only to cases within the old Acts. On the other hand, the Scotch Courts decided that under the above Act a complaint against a servant for failure to enter upon a contract of service might be entertained, although the contract was not in writing: *Kershaw v. Mitchell & Co.* (1872), 2 Coup. 206.

(*f*) *Souch v. Strawbridge* (1846), 2

C. B. 808 (contract for the maintenance of a child "so long as the defendant shall think proper"); *Smith v. Neale* (1857), 2 C. B. N. S. 67.

(*g*) *Birch v. Liverpool* (1829), 9 B. & C. 392; *Darcy v. Shannon* (1879), 4 Ex. D. 81 (engagement for three years by a foreman tailor on the terms that if the defendant left plaintiff's employment he should not engage in the service of any one carrying, or himself carry, on business of tailor, &c., within five miles of D.; within the statute); *Cherry v. Heming* (1849), 4 Ex. 631.

(*h*) *Braegirdle v. Heald* (1818), 1 B. & Ald. 722. "Performed," said Lord Ellenborough, means "a full, effective, and complete performance."

(*i*) *Suelling v. Huntingfield* (1834), 1 Cr. M. & R. 20.

year thereafter, unless the employment were determined by three months' notice. An action for wrongful dismissal did not lie (*h*).

Plaintiff agreed on Sunday the 23rd of March to serve defendant for a year, commencing next day. On Monday plaintiff entered defendant's service, received 20*l.* on account, and gave a receipt—"On account of my salary for assistance in keeping books from Lady-day, for twelve months." A jury might infer a fresh substituted contract on the 24th for a year's service (*l*).

Plaintiff entered the service of defendant under a written agreement, dated April 13th, 1871, by which he agreed to accept "the situation as foreman of the works of the defendant, &c." on his receiving "a salary of two pounds per week and house to live in from 19th April, 1871." *Held*:—A weekly hiring; and evidence of a conversation at the time of signing the contract with a view to show that a hiring for a year was intended, not admissible (*m*).

Plaintiff signed the following document which was drawn up by a clerk in the employment of the defendants with their authority:—"To Messrs. H. & Co." (the defendants), "Gentlemen, in consideration of your advancing my salary, I hereby engage to continue in your office for three years from January 1, 1890." *Held*, a sufficient memorandum (*n*).

Plaintiff was verbally engaged on December 6th to serve the defendants for one year from the following day, December 7th. *Held*, not within the statute (*o*).

The agreement need not be in one writing; it may be contained in several documents which refer to each other, and which do not require verbal evidence to show that they in fact refer to each other (*p*). Thus, when A., a master builder, filled in, signed, and sent to the Secretary of the Free Labour Registration Society a form containing particulars as to the kind of employment and terms offered by him at S., and when B., having heard the form read over to him, signed an agreement headed "Free Labour Society," by which he stated that he had accepted employment at S., and that he would not quit the service of his employer without just cause, it was held that the documents sufficiently referred to each other, and constituted a contract in writing signed by both parties (*q*). The signature may be on one part of the memorandum

(*k*) *Dobson v. Collis* (1856), 1 H. & N. 81.

(*l*) *Cawthorne v. Cordrey* (1863), 13 C. B. N. S. 406, commented on by Brett, L. J., in *Britain v. Rossiter* (1883), 11 Q. B. D. 123, where it was held that a contract to serve, the service to commence on the second day after the making of the contract, is within the statute.

(*m*) *Evans v. Roe* (1872), L. R. 7 C. P. 138.

(*n*) *Evans v. Hoare* (1892), 66 L. T. 346.

(*o*) *Smith v. Gold Coast, &c. Ltd.*, [1903] 1 K. B. 285; *ibid.* p. 538 (C. A.).

(*p*) *Boydell v. Drummond* (1809), 11 East, 142; *Jones v. Victoria Graving Dock Co.* (1877), 2 Q. B. D. 314. Signing by both parties is not requisite. Mere initials are apparently sufficient: Leake on *Contracts* (4th ed.), p. 184.

(*q*) *Crane v. Powell* (1868), L. R. 4 C. P. 123. A clause in articles of

or agreement; the terms of the employment may be on another; and the signature need not have been put to attest or verify the contract. A draft agreement between plaintiffs and a company was prepared; a minute of a resolution to engross, sign, seal, and execute the agreement was entered in the company's books; and at the next board meeting the chairman signed the minute thus: "Read and confirmed; Claud Hamilton." *Held*:—that, though the signature might have been intended merely to be in compliance with the requirements of the Companies Act, 1862, s. 67, it satisfied the Statute of Frauds (*v*). A letter written by an agent within the scope of his authority, referring to an unsigned document as containing his principal's contract, is sufficient memorandum; no special authorisation by the principal to sign the letter as a record of the contract is necessary (*s*). Very often the agreement is contained wholly or in part in the rules of a trade union or society to which the employer has assented, or may be collected from regulations by which the employer and the workmen or their representatives have agreed to be bound. "Collective bargaining," *i.e.*, an agreement by one or more persons on behalf of a number of workmen, is common (*t*).

The fact that an agreement which otherwise would be within the statute has been partially performed, does not take it out of the statute (*u*). The equitable doctrine of part performance does not extend to contracts of service. But when work has been done—whether it was done within a year or not—and an action is brought on an express or implied agreement to pay for the worth of the

association that Mr. W. E. "shall be solicitor of the company, &c.," does not create a contract between the plaintiff and the company. It is *res inter alios acta*, of which the former cannot take advantage: *Eley v. Positive Government Security Life Assurance Co.* (1876), 1 Ex. D. 20 and 88. As to evidence of appointment of officer, *Browning v. Great Central Mining Co.* (1860), 5 H. & N. 856.

(*v*) *Jones v. Victoria Graving Dock Co.* (1877), 2 Q. B. D. 314; *Ridgway v. Wharton* (1857), 6 H. L. Cas. 238; *Johnson v. Appleby*, see note (*e*).

(*s*) *John Griffiths Cycle, &c. v. Humber*, [1899] 2 Q. B. 414 (an agreement to employ plaintiffs as sole agents for the defendants for three years).

(*t*) For example, in the agreement between the employers and workmen

settling a dispute in the engineering trade there is a provision:—"General alterations in the rate of wages in any district or districts will be negotiated between the employers' local association, and the local representatives of the trade unions or other bodies of workmen concerned;" *Report of Chief Labour Correspondent*, 1897, p. 133.

(*u*) *Boydell v. Drummond* (1809), 11 East, 142; *Britain v. Rossiter* (1879), 48 L. J. Q. B. 362. (Agreement verbally on Saturday to serve for a year; employment to commence next Monday; plaintiff served for part of a year and then was dismissed; held that the contract was within sect. 4 of the Statute of Frauds, and that the case was not taken out of the statute by part performance.) Here all wages due up to dismissal were paid. See Wood's *Master and Servant*, pp. 357—374.

work actually done, the absence of writing is no defence to the action (*x*).

The statute was intended to exclude the mistakes and conflicts of evidence which arise when there is no complete written record of a contract. The object of the statute would be defeated, the evils which it was designed to avert would be introduced, if it were permissible to vary, add to, or subtract from the written words by verbal testimony, and if one of the parties might say, "This was qualified by an arrangement made at the time;" or "our meaning was not completely expressed by the written agreement, and was so and so." In *Giraud v. Richmond* (*y*), the written agreement between a master and his clerk stated that the latter should receive a certain annual salary, increasing each year; the clerk sought to show that it was agreed that the salary should be paid quarterly; the Court would not receive evidence with this view, nor would it infer such an agreement from the fact that the salary had been paid quarterly. The consideration for the promise must be stated; if the agreement merely mentions the promise on the part of one person, without stating the consideration—*e.g.*, if it merely says, "A. B. hereby promises to be groom to C. B. for two years," it will not be enforced against A. B. (*z*).

The above principles must be taken with some reservations. Men rarely commit to writing all that they intend and agree to; they do not write out what may be taken for granted; *cetera va sans dire* holds as to many things which good sense would imply. The law recognises this fact; and if a jury are of opinion that a contract was made with reference to a particular custom, it will be regarded as part of the contract. Whether such a custom exists, and whether the contract was intended to embody it, is a question of fact for the jury (*a*). A term in the contract may be the rules of the establishment or workshop in which a workman is engaged (*b*). Knowledge of such rules by the servant must be shown; *e.g.*, by proving that the rules were displayed in a prominent place (*c*), and that the workman could read.

(*x*) Chitty on Contracts, 13th ed., 44, 104. Per Tindal, C. J., in *Souch v. Strawberry* (1846), 2 C. B. 808, 814; and see *Knowlman v. Blutt* (1874), L. R. 9 Ex. 307 (Ex. Ch.); per Thesiger, L. J., in *Britain v. Rossiter* (1879), 11 Q. B. D. 123, 133.

(*y*) (1846), 2 C. B. 835.

(*z*) *Sykes v. Dixon* (1839), 9 A. & E. 693. See Chap. VIII.

(*a*) *Abbott v. Bates* (1874), 43 L. J. C. P. 150; 45 L. J. C. P. 117, as to "neces-

saries" in articles of apprenticeship; *R. v. Stoke-upon-Trent* (1843), 5 Q. B. 303, as to custom as to holidays; *Grant v. Maddox* (1846), 15 M. & W. 737, as to usage as to payment in theatrical profession; *Moult v. Halliday*, [1898] 1 Q. B. 125, as to custom of discharging domestic servants at end of first month of service.

(*b*) *Carus v. Eastwood* (1875), 32 L. T. 855.

(*c*) This is required by some statutes, *e.g.*, Coal Mines Regulation Act, 1887,

It will be seen hereafter that a contract of hiring and service is *prima facie* a contract for a year (*d*).

Contracts of Seamen.

Agreements with seamen have been the subject of the special attention of the Legislature. By sects. 113 and 114 of the Merchant Shipping Act of 1894, they must be in writing, except in case of ships of less than eighty tons register tonnage, exclusively employed in the coasting trade of the United Kingdom. The Merchant Shipping Acts contain many regulations with respect to the form of and particulars in agreements with seamen. They are mainly comprised in sects. 113--125 of the Merchant Shipping Act of 1894 (57 & 58 Vict. c. 60). These agreements are exempt from stamp duty (Merchant Shipping Act, 1894, s. 721; 54 & 55 Vict. c. 39, s. 1).

Under the 2 Geo. II. c. 36, which required all agreements for wages between captains and their crews to be in writing, it was decided in *White v. Wilson* (*e*), that a contract which did not mention, besides the money wages, the fact that a sailor was to get "the average price of a negro slave" was void. The law still requires the agreement to be in writing, but only when the ship in fact goes to sea (57 & 58 Vict. c. 60, s. 113).

"Seamen" orally engaged to do work on a ship before she goes to sea may enforce their lien on the ship for wages due under the oral agreement, the ship not in fact going to sea at all (*f*).

Contracts of Apprenticeship.

The 5 Eliz. c. 4, s. 25, required that the binding of apprentices should be by indenture (*g*); and similar provisions as to (i) parish apprentices and (ii) apprentices to shipowners, fishers on the sea, gunners, and shipwrights are contained in 43 Eliz. c. 2, s. 5, and 5 Eliz. c. 5, s. 12 respectively.

As has been stated, where there was an expressed or implied agreement to teach a person a trade, the Courts held that a defective contract of apprenticeship—that is, a contract not sufficient to support a settlement—existed. The 54 Geo. III. c. 96, s. 2, declares that "it shall and may be lawful for any person

s. 57; Truck Act, 1896, ss. 1, 2, and 3; Factory Act, 1901, ss. 35, 77, 78.

(*d*) See p. 135.

(*e*) (1800), 2 B. & P. 116. See also *Elsworth v. Wellmore* (1803), 5 Esp. 84.

(*f*) *Re Great Eastern Steamship Co.* (1885), 5 Asp. M. C. 511.

(*g*) This statute would appear to apply only to apprentices to husbandry. See Austin on *Apprentices*, p. 17.

to take or retain or become an apprentice, though not according to the provisions of the said Act (*scil.* 5 Eliz. c. 4); and that indentures, deeds, and agreements in writing entered into for that purpose, which would be otherwise valid and effectual, shall be valid and effectual in law, the repeal of so much of the said Act as is herein last above recited notwithstanding": and both the Acts of 5 Eliz. are now entirely repealed. The indenture must be executed by the infant (*h*), and the parties must be named therein; but the master need not sign a counterpart (*i*); though, if he do sign, it is evidence against him though the apprentice have not executed (*k*).

As contracts of apprenticeship are usually for more than a year, they must in general be in writing.

The Merchant Shipping Act, 1894, by sects. 105—109, prescribes regulations as to the indentures of apprentices to the sea (*l*).

Apprentices to the sea are subject to the Employers and Workmen Act, 1875 (*m*), but are not within the Conspiracy and Protection of Property Act, 1875 (*n*).

Apprenticeships of sea-fishing boys are specially dealt with in sects. 393—398 of the Merchant Shipping Act, 1894, and the indentures in such cases must be in the form prescribed by the Order in Council made under sect. 395 (*o*).

Parish apprenticeship of pauper children by Guardians is regulated by the statutes and orders mentioned in the note (*p*).

(*h*) *R. v. Keynsham* (1804), 5 East, 309. As to recovering compensation for boy's labour or for board during probation, *Keene v. Parsons* (1819), 2 Stark. 506; *Wilkins v. Wells* (1825), 2 C. & P. 231; *Earratt v. Burghart* (1828), 3 C. & P. 381; *Phillips v. Jones* (1834), 1 A. & E. 333; *Harrison v. James* (1862), 7 H. & N. 804. In the City of London the indentures must be enrolled: *Code v. Holmes*, 2 Roll. Rep. 305.

(*i*) *R. v. St. Peter's-on-the-Hill* (1741), 2 Bott. 367.

(*k*) *Burleigh v. Stibbs* (1793), 5 T. R. 465; *Millership v. Brookes* (1860), 5 H. & N. 797.

(*l*) For precedents of indentures, see Board of Trade form set out in Temperley's *Merchant Shipping Act*, 1894 (1895 ed.), at p. 447.

(*m*) Sect. 11 of 43 & 44 Vict. c. 16

(Merchant Shipping Act, 1880), repeals the clause of sect. 13 of the Employers and Workmen Act, 1875, which exempted apprentices to the sea from its operation.

(*n*) Sect. 16.

(*o*) Order dated Dec. 12th, 1894; set out in Scrutton's *Merchant Shipping Act*, 1894 (1895 ed.), at p. 705.

(*p*) *General Consolidated Order*, July 24th, 1847, Articles 52—74; *General Order*, Feb. 15th, 1898. Statutes:—Poor Relief Act, 1601 (43 Eliz. c. 2), s. 3; Parish Apprentices Act, 1792 (32 Geo. 3, c. 57); Parish Apprentices Act, 1802 (42 Geo. 3, c. 46); Parish Apprentices Act, 1816 (56 Geo. 3, c. 139); Poor Law (Apprentices) Act, 1851 (14 & 15 Vict. c. 11); Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), s. 33.

CHAPTER VII.

STAMPS.

AGREEMENTS for the hire of labourers, artificers, “manufacturers,” menial servants, and sailors coasting from port to port in the United Kingdom do not require to be stamped (*a*).

Agreements, as a rule, require to be stamped; and no document, letter, or contract, can be admitted in evidence as an agreement or as evidence of such unless it be stamped. Schedule I. to the Stamp Act, 1891 (54 & 55 Viet. c. 39, *sub tit.* “Agreement”), exempts:—

(1.) Agreement or memorandum the matter whereof is not of the value of 5*l.*

(2.) Agreement or memorandum for the hire of any labourer, artificer, manufacturer, or menial servant.

(*a*) Agreements with seamen made in forms sanctioned by the Board of Trade are also exempt from stamp duty: 57 & 58 Viet. c. 60, s. 721. *Dakin v. Watson* (1841), 2 Cr. & Dix, 224. (Quoted in Tilsley on the *Stamp Acts*, p. 45; a clerk not within exception.) *Wilson v. Zubeta* (1849), 14 Q. B. 405. (A stoker or fireman on a steamship, who was bound to obey the orders of the engineers, held to be a labourer or artificer.) *R. v. Wortley* (1851), 21 L. J. M. C. 44. (Man employed to look after glebe land, his wife undertaking the care of the dairy and poultry; a labourer.) *Bishop v. Letts* (1858), 1 F. & F. 401. (Overseer in a printing office an artificer.) I am not aware of any decision explaining what is meant by “hire of any manufacturer,” nor do I know what it means. There have been many discussions as to whether a contract was for the sale of goods or for work or labour. See p. 36, *supra*. Here may be also cited *Pinner v. Arnold* (1835), 2 C. M. & R. 613. (Agreement between plaintiff, a pressmaker, and defendants, copperplate printers, to make an eagle press; the agreement within the third exemption.) *Hughes v. Budd* (1840), 8

Dowl. 478. (Agreement by plaintiff to quarry a sufficient quantity of stone at C. to complete a dry wall; not within the exemption, and plaintiff unable to recover, though the defendant had had the benefit of the work.) *Vaughton v. Brine* (1840), 1 M. & G. 359. (A resolution of an unincorporated company to engage a secretary, not liable to duty.) *Chanter v. Dickenson* (1843), 5 M. & G. 253. (Memorandum as follows: “Send me a licence to use two of Chanter & Co.’s patent furnaces, to be supplied to a single plate and cloth boiler, for which I agree to pay Mr. Chanter or his order as ag., 25*l.* as a patent right, and which is to include iron-works, fire-bricks, and labour; engineers’ or furnace-builders’ time to superintend or fix the above order, to be paid 6*s.* per day, &c.”; not within the exemption.) See also *Poulton v. Wilson* (1858), 1 F. & F. 403. (A contract for hire of a servant, &c., may be mixed up with a contract for some other purpose, and in this case it will be necessary to determine what is the primary object.) *Smith v. Cator* (1819), 2 B. & Ald. 778. See, too, the decisions on “artificer” in sect. 2 of Truck Act, 1887, at p. 344, *infra*.

(3.) Agreement, letter, or memorandum made for or relating to the sale of any goods, wares, or merchandise.

(4.) Agreement or memorandum made between the master and mariners of any ship or vessel for wages on any voyage coastwise from port to port in the United Kingdom.

These exceptions are taken from the Stamp Act, the 55 Geo. III. c. 184, and the decisions upon that statute illustrate the later Act: see note (a), on p. 88.

The Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 25, provides that—

Every writing relating to the service or tuition of any apprentice (b), clerk, or servant placed with any master to learn any profession, trade, or employment (except articles of clerkship to a solicitor or law agent or writer to the Signet), is to be deemed an instrument of apprenticeship.

Upon every instrument of apprenticeship there is imposed a fixed duty of 2s. 6d. In the absence of a stipulation to the contrary, the master pays the stamp (c).

EXEMPTIONS.

(1.) Instrument relating to any poor child apprenticed by, or at the sole charge of, any parish or township, or by or at the sole charge of any public charity (d), or pursuant to any Act for the regulation of parish apprentices.

(2.) Instrument of apprenticeship in Ireland, where the value of the premium or consideration does not exceed 10l. (Sched. I. *sub tit.* "Apprenticeship").

Under the "General Exemptions from all Stamp Duties" (Sched. I.) are included:—

(3.) Instruments of apprenticeship, bonds, contracts, and agreements entered into in the United Kingdom for or relating to the service in any of Her Majesty's colonies or possessions abroad of any person as an artificer, clerk, domestic servant, handicraftsman, mechanic, gardener, servant in husbandry or labourer.

By sect. 108 of the Merchant Shipping Act, 1894, indentures of apprenticeship to the sea are exempted from stamp duty.

The indentures may be stamped after execution on the payment of a penalty of 10l. and the unpaid duty (e). By virtue of sect. 14,

(b) As to what are contracts of apprenticeship, see p. 40, *supra*. *R. v. Louth* (1828), 5 B. & C. 247. (An indenture to two masters to serve them consecutively in two distinct trades for periods of four and three years, requires only one stamp.)

(c) *Kene v. Parsons* (1819), 2 Stark. 508.

(d) As to what is a "public charity," see *Hall v. Urban Sanitary Authority of Derby* (1885), 16 Q. B. D. 163.

(e) *Vide* sect. 15, Stamp Act, 1891.

sub-sect. (4) of the Stamp Act, 1891, unstamped documents are admissible in all criminal proceedings.

In view of the provisions of sect. 14, sub-sect. (4), the Stamp Act of 1870 still applies to instruments of apprenticeship executed before January 1, 1892: so that the consideration in such cases must be stated correctly and fully in the instrument, and the *ad valorem* duty be calculated on the amount of the consideration (*f*).

By the Customs and Revenue Act of 1869 (32 & 33 Vict. c. 14, s. 18), a duty of 15s. is payable "for every male servant."

By sect. 19 it is provided:—

(3.) The term "male servant" means and includes any male servant employed either wholly or partially in any of the following capacities; that is to say, *maitre d'hôtel*, house steward, master of the horse, groom of the chambers, *valet de chambre*, butler, under butler, clerk of the kitchen, confectioner, cook, house porter, footman, page, waiter, coachman, groom, postilion, stable-boy or helper in the stables, gardener, under-gardener (*g*), park-keeper, game-keeper, under game-keeper, huntsman and whipper-in, or in any capacity involving the duties of any of the above descriptions of servants, by whatever style the person acting in such capacity may be called: (4.) Every person who shall furnish any male servant on hire shall, for the purposes of this Act, be deemed to be the employer of such servant: (5.) It shall not be necessary for licences to be taken out in the following cases, viz.:—By any officer in Her Majesty's army or navy for any servant, being a soldier in the army or a person actually borne upon the books of a ship, and employed by such officer in accordance with the regulations of Her Majesty's service: By any licensed retailer of exciseable liquors or licensed keeper of a refreshment house for any servant employed by him solely for the purposes of his business, such servant being the only male servant employed by him: By any person who shall have made entry of his premises in accordance with section twenty-eight of this Act for any servant employed by him at such premises in the course of his trade, other than a servant employed to drive a carriage with any horse let to hire for any period exceeding twenty-eight days; provided that such person shall have complied with all the provisions contained in the said section: By any person duly licensed by proper authority to keep or use any public stage or hackney carriage for any servant necessarily employed by him to drive such stage or hackney carriage, or in the care of such stage or hackney carriage, or of the horse or horses kept and used by him to draw the same.

Sect. 27 imposes a penalty of 20*l.* for not taking out a licence. Every person who shall furnish a servant on hire is required to

(*f*) *I*vide sect. 40 and the schedule of 33 & 34 Vict. c. 97.

(*g*) *Dillon v. Marquis of Bath* (1899), 15 Times L. R. 393. The employer of an apprentice under a *bonâ fide* contract

of apprenticeship requires no licence for the apprentice under this section, even though the apprentice is employed in one of the capacities specified in this definition: *Horan v. Hayhoe*, [1904] 1 K. B. 288.

enter in a book the name of the servant and the name and address of the person hiring such servant (sect. 29).

The Court of Exchequer, in *Spencer v. Sheerman* (*h*), decided that hotel-keepers must take out licences for waiters engaged only for two or three weeks. But the 36 & 37 Viet. c. 18, s. 4, annuls the effect of this, by enacting that it shall not be necessary for a licence to be taken out under 32 & 33 Viet. c. 14, by any hotel-keeper, retailer of intoxicating liquor, or refreshment-house keeper, for any servant wholly employed by him for the purposes of his business.

(*h*) (1871), 23 L. T. 873. See also 39 Viet. c. 16, s. 5, as to "male servant."

CHAPTER VIII.

THE CONSIDERATION.

AGREEMENTS of hiring and service require consideration in order that they may be enforced.

Mandate, that is, a gratuitous undertaking to perform services, is of much less consequence in English law, than it is in Roman law (*a*). The former has to do mainly with promises to serve for some consideration. If A. promises to serve B., and B. does or gives or promises nothing in return, no action (unless in the case of contracts under seal) lies; the maxim *ex nudo pacto non oritur actio* applies (*b*). Consideration embraces many things besides money. It will not include the ties of relationship or friendship, or merely moral duties. To support a promise it is, however, enough that there should be, to quote the judgment of the Court in *Currie v. Misa* (*c*), "some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility, given, suffered, or undertaken by the other." The consideration need not be such as in fairness would be adequate; that is a matter for the parties to the agreement. The Courts will not, for example, inquire whether a servant's wages are too low, or whether the agreement of hiring is too much to the advantage of one of the parties (*d*). The consideration cannot consist of bygone transactions, unless anything was done at the request of the person making the promise (*e*). A promise made in respect of a past

(*a*) Solm's *Institutes of Roman Law* (Ledlie's translation), p. 422; Hunter's *Roman Law*, 308.

(*b*) Promise by directors to work gratuitously not binding: *Lambert v. Buenos Ayres Co.* (1869), 18 W. R. 180. In *Dunston v. Imperial Gas Light Co.* (1831), 3 B. & Ad. 125, it was held that directors of a company, not being ser-

vants, but managers or governors, could recover no remuneration from the company unless by virtue of an express resolution under seal.

(*c*) (1875), L. R. 10 Ex. 162.

(*d*) *Hitchcock v. Coker* (1837), 6 A. & E. 438.

(*e*) Leake's *Law of Contracts* (5th ed.), 6, and authorities there cited.

matter may be induced by gratitude for what has been done; the transaction is not the less, in a legal point of view, purely voluntary.

If the contract be within the Statute of Frauds, the consideration must be stated in writing (*f*). It may consist either in money or goods—subject to the provisions of the Truck Acts.

In many contracts of service the consideration is not expressed. The parties have in their minds certain usages. They do not state that which they assume need not be stated, and they are content to take for granted many of the terms of their agreement. Questions of difficulty frequently arise as to whether there exists a contract the consideration of which is implied or may be fairly inferred, or whether there is a mere promise which is not binding owing to the absence of consideration. In other words, is there, to use an expression common in the earlier cases, “mutuality”? A., for instance, agrees to serve B. for seven years. Does B. thereby by implication agree to retain A. in his service for the same period? The current of the authorities is, as will be seen from Appendix A., far from uniform (*g*); and it is difficult to reconcile them, the Courts, in the later cases, being more ready to imply terms. An action will not lie where A. is not bound to serve, or B. is not bound to retain him in service. No doubt, if A. enter upon his duties, and perform certain work, the law will imply a promise by B. to pay, and A. will be entitled to recover on a *quantum meruit* (*h*). But when B. seeks to compel A. to fulfil an agreement to work, or to obtain damages for non-fulfilment, it must be shown that there is an obligation on the part of B. to retain him in service. Thus, in *Dunn v. Sayles* (*i*), the Court refused to imply a covenant to retain the plaintiff's son in the service of the defendant for five years, when it was agreed by deed that the plaintiff's son should continue with the defendant as an assistant surgeon dentist for five years, and that the defendant should pay weekly wages. This decision has been much criticised; and the tendency in recent cases has been to imply a promise on the part of

(*f*) *Wain v. Wallters* (1804), 5 East, 10.

(*g*) There is much ambiguity as to the meaning of “mutuality”: Crompton, J., in *Hittle v. Frankland* (1862), 2 B. & S. 55. Here it is taken in the sense of mutual promises; one party makes one promise, and another makes a promise to support it. See as to want of mutuality, *Mayor of Kidderminster v.*

Hardwick (1873), L. R. 9 Ex. 13; *Arnold v. Mayor of Poole* (1842), 4 M. & G. 896. See Appendix to this Chapter for chief decisions on this question.

(*h*) See *Else v. Gatward* (1793), 5 T. R. 143.

(*i*) (1844), 5 Q. B. 685. See Appendix to this Chapter.

the master to retain "whenever there is something not expressed which it is clear to all men of ordinary intelligence and knowledge of business must either have been latent in, or palpably present to, the minds of both parties when the contract was made" (*k*); or as Lindley, L. J., put it in a recent case (*l*), "the contract will be treated as subject to an implied condition that it is to be in force only so long as a certain state of things continues, in those cases only where the parties must have contemplated the continuing of that state of things as the foundation of what was to be done." Thus, when A. agreed to serve B. for seven years on certain terms, and B. to pay his wages so long as he was so employed, it was held that B. was bound to employ A. for seven years (*m*).

While the Courts will often presume a promise to hire or retain in service, though it be not actually expressed, they will sometimes imply a right to terminate a contract of hiring or service, though no such right be expressed. Suppose that it is agreed between A. and B. that for seven years, or so long as A. shall continue to carry on business in Liverpool, A. shall be the sole agent there for the sale of B.'s coals, and that B. shall not employ any other agent there. Suppose further, that it is a term of the agreement that if A. does not sell a certain amount a year, or if B. cannot supply a certain amount a year, either party may determine the agreement; and that B. sells the colliery at the end of four years. Has B. been guilty of a breach of contract? Such were the chief facts in *Rhodes v. Forwood* (*n*). The House of Lords, reversing the decision of the Exchequer Chamber and affirming that of the Court of Exchequer, held that no action would lie against B. for breach of contract. The House of Lords thought that there was no implied obligation on the part of B. to carry on his business and not to sell it for seven years. It would be different if the agreement were in effect, that the business should be carried on in order that the profits might be remuneration for advantages

(*k*) Brett, J., in *Thorn v. Mayor of London* (1875), L. R. 10 Ex. 123.

(*l*) *Turner v. Goldsmith*, [1891] 1 Q. B. 544, at p. 550. (A case of contract of service.)

(*m*) *Hartley v. Cummings*. See Appendix.

(*n*) (1876), 1 App. Cas. 256. See *Brace v. Calder*, [1895] 2 Q. B. 253: especially remarks of Esher, M. R., at p. 259. (Defendants, a firm of four members, engaged plaintiff as manager

for two years. Before this time expired two of the partners retired, and the business was carried on by two. They were willing to continue to employ plaintiff on the same terms as before, but he declined to serve. *Held*, in an action for wrongful dismissal, by Lopes and Rigby, L. JJ., Esher, M. R., dissenting, that the dissolution of the partnership operated as a wrongful dismissal, but that the plaintiff was entitled only to nominal damages.)

already received. In such circumstances, it would be obviously unfair that one party should be able to cast off all obligations to the detriment of the other. That was the position in *McIntyre v. Belcher (o)*. The plaintiff, a surgeon, sold his business to the defendant. It was agreed that he should introduce the defendant to his patients, and should receive for the first four years one-fourth part of the gross earnings. In such a state of facts it was held that there was an implied covenant on the part of the defendant to continue the practice (*o*).

(*o*) (1863), 14 C. B. N. S. 654. The following are the chief decisions: *Burton v. Great Northern Rail. Co.* (1854), 9 Ex. 507. (By agreement on 1st October, 1851, plaintiff undertook to provide all waggons, horses, &c. necessary for the cartage of all grain, &c. between Hatfield and Ware, that might be presented to him, at 5s. a ton. "It is mutually agreed that this agreement shall continue in force for the period of twelve months from the date hereof." The company gave notice that the arrangement would cease after 1st April, 1852. Held, that the only contract by defendants was to pay the stipulated price for the cartage of such goods as might be presented.) *London, Leith, and Glasgow Shipping Co. v. Ferguson* (1850), 13 D. 51. (An agent paid by the company by a commission on profits not presumed to be engaged from year to year; the company entitled to discontinue their trade without giving any previous notice or any compensation for the loss of his situation.) *Stirling v. Maitland* (1864), 5 B. & S. 840. (An insurance company covenanted for valuable consideration with C. D., to appoint him their agent in Glasgow, together with A. B., and if A. B. should be displaced from the agency, to pay C. D. a certain sum. The company, having transferred their business to another company, were wound up and dissolved. The sole remuneration was by commission. Held, that the plaintiff was "displaced" within the meaning of the contract. "I look on the law to be that, if a party enters into an arrangement which can only take effect by the continuance of a certain existing state of circumstances, there is an implied engagement on his part that he shall do nothing of his own motion to put an end to that state of circumstances, under which alone the arrangement can be operative." Cockburn, C. J.) *Ex parte Macheure* (1870), 5 Ch. 737. (A. entered into an agreement with an

insurance company to act as their agent for five years, and to transact no other insurance business without the consent of the company, in consideration of which he was to receive a fixed salary and 10 per cent. commission on the nett profits. Before the end of the five years the company was wound up. Agent entitled to claim for salary, but not entitled to claim against the company for loss of commission, inasmuch as the contract left the company free to determine the extent of their business.) *In re Patent Floor Cloth Co.* (1872), 41 L. J. Ch. 476. (Company engaged D. and G. as commercial travellers for three years; they were paid by a commission on all goods ordered through them; the company was wound up voluntarily before the end of the three years; Bacon, V.-C., held that D. and G. were entitled to compensation for commission for the unexpired portion of the three years. He distinguished the case from *Macheure's Case*, on the ground that there the servant had stipulated for salary and commission.) *In re Railway and Electric Appliances Co.* (1888), 38 Ch. D. 597. (Sale of patent; covenant by purchasers to pay to vendors a royalty for every article manufactured by them under the patent "while subsisting," and a proportion of the profits arising from the manufacture and sale of articles made under the patent "while subsisting;" failure by the purchasers through inadvertence to keep the patent on foot; action by vendors against purchasers for damages in respect of the royalties lost through the lapse of the patent: held, that no covenant to keep the patent on foot could be implied; and that, even if it could, the plaintiffs were only entitled to nominal damages, the purchasers being under no obligation, either express or implied, to make the patented articles, and being no longer able to carry on business.) Kay, J., puts the right to have a term of this nature implied on

A similar question arises as to whether there is an obligation on the part of the master to find work for his servant. Where the contract of hiring merely contains an undertaking to pay stipulated wages in proportion to the work done, there is no implied obligation on the master's part to find work; though the disposition is to construe contracts of doubtful significance on this point as an agreement on the master's part to enable the servant to earn regular wages (*p*). A servant agrees to work for A. B. and no one else for twelve months, or until three months' notice is given. What obligation does this imply on the part of the employer? To find a reasonable amount of work, having regard to the state of trade, so long as the employment lasts (*q*). On this subject the words of Cockburn, C. J., in *Churchward v. Queen* (*r*), are in point:—"Where the act to be done by the party binding himself can only be done upon something of a corresponding character being done by the opposite party, you would there imply a corresponding obligation to do the things necessary for the completion of the contract." So if a man engages to work, and goes to great expense, and he is only to be paid by the measure of the work he has performed, the contract pre-supposes and implies an obligation to supply the work.

A review of the authorities on this point discloses no definite rule. Each case must be decided on its merits (*s*). It is the duty of the Court to decide by reference to the terms of the particular contract, or of a jury by looking at all the facts, and the practice of mankind, to say whether it was intended that a business should be continued, that work should be found, or a servant or labourer should be retained (*t*). When a servant is engaged in order to perform duties in regard to a certain definite business rather than to give his services in general, the duration of the contract is naturally regulated by the duration of the thing itself; servants are for the

the ground of bad faith or something akin to it in the party sought to be made liable. *Turner v. Goldsmith*, [1891] 1 Q. B. 544. (Agreement to employ plaintiff as traveller, determinable by notice at end of five years; payment by commission on his sales of goods manufactured or sold by defendant; factory burnt down at end of two years, and business not resumed by defendant: held, action for damages maintainable.)

(*p*) See Appendix.

(*q*) *Deverald v. Rosser and Sons*, [1906] 2 K. B. 728.

(*r*) (1865), L. R. 1 Q. B. 195. See

as to implied covenants, *The Moorcock* (1889), 14 P. D. 64; and particularly the judgment of Bowen, L. J.

(*s*) *Hamlyn & Co. v. Wood & Co.*, [1891] 2 Q. B. 488.

(*t*) *Turner v. Sawdon*, [1901] 2 K. B. 653. Contract to continue to engage and employ plaintiff as salesman for four years at fixed salary. At end of two years defendants continued to pay salary, but refused to give him work: held, defendants not liable. See *Fechter v. Montgomery* (1863), 33 Beav. 22; *Bunnings v. Lyric Theatre* (1894), 71 L. T. 396.

business, and not the business for the servants. It would be improbable in most cases that it was understood that a business was kept up merely or mainly to give employment to them. An agent's authority may be revoked at any time; therefore when a contract is one of agency rather than of hiring and service, the natural inference would seem to be that the employer is free to terminate the relation at any time, provided the employment be not coupled with an interest.

Contracts of hiring and service will not be enforced if they are for illegal or immoral purposes, or are contrary to public policy.

Most contracts of hiring and service and work and labour which have been pronounced void, on the ground that they are offensive to morality, have related to sexual morality. But the principle is not confined to cases of this sort; the maxim *ex turpi causâ non oritur actio* holds good generally. The application of it to contracts of hiring and service and work and labour is simple, when the contract is on the face of it, or necessarily, immoral. Thus, in *Poplett v. Stockdale* (*u*), the plaintiff sued for the expense of printing an immoral book called "The Memoirs of Harriette Wilson," containing the history of a celebrated prostitute; and the Court refused to assist the plaintiff. "Every servant, to the lowest, engaged in such a transaction, is prevented from receiving compensation." Equally clear are the cases in which statute law is broken. Thus, it has been held that a printer cannot recover the cost of printing a pamphlet upon the first and last leaves of which he had not, in compliance with the 39 Geo. III. c. 79, s. 27, printed his name (*x*). So, too, it was held that a person could not

(*u*) (1825), 2 C. & P. 198; *Forbes v. Jones* (1802), 4 Esp. 97 (Assumpsit will not lie to recover the price of obscene prints); *R. v. Northcote* (1831), 1 B. & Ad. 912; *Bradshaw v. Hayward* (1842), Car. & M. 591.

(*x*) *Bensley v. Bignold* (1822), 5 B. & Ald. 335. See also *Allen v. Rescous*

(28 Chas. II.), 2 Lev. 174. Contract "to beat J. S. out of a close." *Cope v. Rowlands* (1836), 2 M. & W. 149. (Unlicensed broker in London cannot recover commission.) *Harrington v. Victoria Graving Dock Co.* (1875), 3 Q. B. D. 549. Plaintiff, an engineer of railway company, sued the defendants

recover money advanced for the bringing out of Italian operas at a theatre, which he must have known was not licensed as required by 10 Geo. II. c. 28, and 28 Geo. III. c. 30 (*y*). The chief difficulty arises when the object of the contract is not necessarily or manifestly immoral. A lessor, for example, sues for the rent of lodgings which he knows are to be used for the purposes of prostitution (*z*). A washerwoman washes and does up linen for a woman known to be a prostitute (*a*). The cases in which facts such as these have been proved, have not been consistent; but the true rule seems to be laid down by the Court of Exchequer in *Pearce v. Brooks* (*b*)—an action by coachmakers for the hire of a brougham let to one who used it for immoral purposes—that the plaintiff cannot recover if an article were supplied with a knowledge that it was to be used for such a purpose. The application to cases of hiring and service is obvious. No one could recover for services which he knew were given in furtherance of an immoral object.

In *Kearney v. Whitehaven Colliery Co.* (*c*) the appellant was employed by the respondents under an agreement by which it was provided that he was to be paid according to the actual weight gotten of the mineral contracted to be gotten, and that he should not leave his employment without fourteen days' notice; the method of calculating the weight of the mineral, under the provisions of the agreement, was illegal, as being in breach of the Coal Mines Regulation Act, 1887: in an action for damages by the company for breach of the agreement by the appellant in leaving his work without fourteen days notice:—*Held*, that the whole contract was not vitiated, and that the company could enforce the provision as to notice. A. L. Smith, L. J., at p. 714, says:—

The rule is, that if the consideration is tainted with illegality, either in whole or in part, all the promises depending upon that consideration must fail; but if the consideration be not tainted with illegality, either wholly or

upon a contract for commission in consideration of his using his influence to induce the railway company to accept the defendants' tender for the repair of ships; no right of action, though the jury found that this contract had not in fact affected the mind of the plaintiff.) *Darves v. Mahana* (1885), 29 Ch. D. 596; *Leavoyd v. Bracken*, [1894] 1 Q. B. 114.

(*y*) *De Begnis v. Armistead* (1833), 10 Bing. 107.

(*z*) *Girardy v. Richardson* (1793), 1 Esp. 13.

(*a*) *Lloyd v. Johnson* (1798), 1 B. & P. 340.

(*b*) (1866), L. R. 1 Ex. 213. See also *Wagh v. Morris* (1873), L. R. 8 Q. B. 202. The dictum of Ellenborough, C. J., in *Bowry v. Bennet* (1808), 1 Camp. 348, that it must be shown not only that the plaintiff had notice of the defendant's immoral calling, but that he expected to be paid from the profits derived from it, cannot be regarded as correct.

(*c*) [1893] 1 Q. B. 700; *Rex v. North-wingfield* (1831), 1 B. & Ad. 912. Leake's *Law of Contracts* (1902 ed.), 555.

in part, then if one of the several promises depending upon it be illegal in itself and the others legal, the legal promises stand and may be enforced against the person who has made them.

It is impossible to enumerate here all the kinds of consideration which have been pronounced invalid as being contrary to public policy. The views of the Courts as to this have varied from time to time. Some judges have claimed almost uncontrolled power to decide what is public policy. Others have declined to go beyond the lines of past decisions (*d*). The doctrine has been acted upon with respect to marriage brokage bonds (*e*), contracts in restraint of trade, insurances by sailors of their wages, and sales of offices. The following are three of the most important classes bearing upon the subject of this book :—

(1.) *Contracts for Sale of Public Offices.*

At Common Law contracts for the sale of public offices are null and void (*f*). The Legislature has also declared that such transactions are invalid : see 12 Rich. II. c. 2 (*g*), 5 & 6 Edw. VI. c. 16, and 49 Geo. III. c. 126. The Act of Edward VI. enumerates a large number of public offices, and imposes (sect. 1) a penalty for the buying and selling of them. Bargains, sales, promises, bonds, agreements relating to such transactions are declared void. The 49 Geo. III. c. 126, extended the provisions of 5 & 6 Edw. VI. to all offices in the gift of the Crown (sect. 1), and declared that persons buying, selling, receiving, or paying money or rewards for offices were guilty of misdemeanors. An agreement which stated that the defendant held the office of “customer” at Carlisle in trust for the plaintiff, and by which the defendant promised to appoint such deputy as the plaintiff should nominate, and to empower him to receive the salary, was held to be illegal at Common Law, and contrary to the two first-named statutes (*h*). So, too, where the defendant promised the plaintiff, who was master joiner at His Majesty’s dockyard at Chatham, in case the defendant should succeed the plaintiff in his post, to allow him a

(*d*) This is the present tendency. For discussion of the subject, see opinions of the judges in *Egerton v. Brownlow* (1853), 4 H. L. C. 1; and the remarks of Lord Bramwell in *Mogul, &c. v. McGregor*, [1892] A. C. 25, 45.

(*e*) *Woodhouse v. Shepley* (1742), 2 Atk. 535; *Hermann v. Charlesworth*, [1905] 2 K. B. 123. See *R. v. Turdebigg* (1753),

Sayer, 100, as to covenant not to marry in apprentice’s indentures.

(*f*) Coke, Litt. 234 a; *Corporation of Liverpool v. Wright* (1859), 28 L. J. Ch. 868.

(*g*) Repealed by Promissory Oaths Act, 1871 (34 & 35 Vict. c. 48).

(*h*) *Gayforth v. Fearon* (1787), 1 H. B. 328.

certain annual share of the profits of the office, Lord Loughborough refused to recognise that there was a good consideration, and declared the agreement invalid (*i*). For similar reasons the Courts have declared that agreements for a sale or an assignment of the profits or emoluments of such offices (*k*) are invalid. But in order to come within the principle, the offices must be really of a public character. In *Grenfell v. The Dean and Canons of Windsor* (*l*), it was proved that the defendant, M., a canon of Windsor, had granted his canonry and the profits of it to the plaintiffs to secure a sum of money. There was no cure of souls; the only requirement was residence within the Castle, and attendance at chapel twenty-one days a year. Lord Langdale held the agreement to be valid, the duties not having been shown to be in any way for the benefit of the public or the maintenance of the dignity of the sovereign (*m*).

(2.) *Contracts for Assignment of Salary, Pension, &c.*

It is said to be contrary to public policy that payments made to induce persons to keep themselves ready for the service of the Crown, as the half-pay of officers in the army or navy, or payments for actual service rendered to the Crown, should be assigned. The other class of cases is that of pensions, like the retiring allowance of a beneficed clergyman, which are by statute (*n*) expressly made not assignable (*o*).

In *In re Mirams* (*p*) it was held that the assignment of the salary of a chaplain to a workhouse was not void as being against public policy, such an office not being public in any but a remote and secondary sense (*p*).

(*i*) *Parsons v. Thompson* (1790), 1 H. B. 322.

(*k*) *Palmer v. Bate* (1821), 2 B. & B. 673. (Sale of profits of clerk of the peace.)

(*l*) (1846), 2 Beav. 544.

(*m*) See also *Low v. Low* (1735), 3 P. W. 391; *Blackford v. Preston* (1799), 8 T. R. 89; *Hanington v. Duchastel* (1781), 1 Bro. C. C. 124; *Flarty v. Odham* (1790), 3 T. R. 681; *Waldo v. Martin* (1825), 4 B. & C. 319; *Thomson v. Thomson* (1802), 7 Ves. 478; *Card v. Hope* (1824), 2 B. & C. 661 (a deed of sale of ship in service of East India Company); *Richardson v. Mellish* (1824), 2 Bing. 229; *Cooper v. Reilly* (1829), 2 Sim. 560 (salary of assistant parliamentary counsel to Treasury not assignable); *R. v. Charretie* (1849), 13 Q. B. 447;

Graeme v. Wroughton (1855), 11 Ex. 146; *Corporation of Liverpool v. Wright* (1859), 28 L. J. Ch. 868. (For other cases under the above Acts, see Chitty's Statutes, 5th ed., by Lely, vol. viii. *sub tit.* "Offices.")

(*n*) 13 Eliz. c. 20. See notes on that Act in Chitty's Statutes (5th ed., by Lely), vol. ii. *sub tit.* "Church and Clergy," p. 9.

(*o*) Per Jessel, M. R., in *Ex parte Haggous* (1882), 21 Ch. D. 85, 91, where the pension of a retired colonial judge was held to be "property" within sects. 87-95 of the Bankruptcy Act, 1869, vesting in the trustee.

(*p*) [1891] 1 Q. B. 594. See the cases on this point in notes (*k*), (*l*) and (*m*), *supra*.

(3.) *Contracts in Restraint of Trade.*

Contracts which are in general restraint of trade are void.

The origin of the rule is uncertain, and its exact limitation was not always understood (*q*). But by the decision in *Mitchel v. Reynolds* (*r*), in the King's Bench, in 1711, the following principles were established:—(1.) That all contracts in general restraint of trade are void; (2.) That particular or limited restraints, if for good consideration, are valid.

(1.) For a time it was supposed that agreements in any way in restraint of trade must be partial as regards space; otherwise, even if limited in time, they would be void. Thus, a bond by which a person bound himself not to follow, or be employed in, the business of a coal merchant for nine months after he should have left his employment, was held bad (*s*). But since the decision of the House of Lords in the *Nordenfellt* case, which will presently be referred to, the question of partial restraint has become comparatively unimportant.

(2.) The restraint or limitation must be reasonable. This is a question of law for the judge (*t*); and the onus is on the defendant,

(*q*) As to the difference of opinion, see *Jollyffe v. Broad* (1621), Cro. Jac. 596.

Mr. Parsons suggests (*Contract*, 2. 748) that the law as to restraint of trade grew out of the English law of apprenticeship, by which no person could exercise any regular trade or handicraft, except after a long apprenticeship, and generally a formal admission to the proper guild. "If he had a trade, he must continue in that trade, or have none. To relinquish it, therefore, was to throw himself out of employment; to fall as a burthen upon the community; to become a pauper." The principle was not, perhaps, definitely laid down until 1711, when *Mitchel v. Reynolds* was decided; but it is stated long before the passing of the 5th of Elizabeth—the first reported case bearing date 1415 (2 Hen. V. f. 5, pl. 16)—and at Common Law there was no such restriction. In *Claygate v. Bachelet*, reported in Owen, p. 143, the doctrine is based on the words of Magna Charta. Probably it arose out of the necessity of putting limits to the practice of corporations, by bye-laws and

otherwise, preventing persons exercising trades, except they were free of the city. See for the history of the principle the judgment of Bowen, L. J., in *Nordenfellt's Case*, [1893] 1 Ch. 630.

(*r*) 1 P. W. 181; 1 Smith's L. C., 11th ed. 406. For reasons of the distinction, *Ward v. Byrne* (1839), 5 M. & W. 548.

(*s*) *Ward v. Byrne*; see note (*r*). Lord Maenaghten thinks that no such absolute rule ever existed, but that the test always has been: Is this covenant reasonable having regard to (i) the public interest, and (ii) the protection of the covenantee? *Nordenfellt's Case*, [1894] A. C. pp. 568 *et seq.* But see Lord Herschell's judgment, *ibid.* Apparently there is no case in which, there being a limitation as to space, the contract has been avoided on the ground of unlimited duration. See *Haynes v. Doman*, [1899] 2 Ch. 13.

(*t*) Parke, B., in *Mallan v. May* (1843), 11 M. & W. at p. 665; *Tallis v. Tallis* (1853), 1 E. & B. 391; *Haynes v. Doman*, [1899] 2 Ch. 13; *Dowden & Pook v. Pook*, [1904] 1 K. B. 45.

the contractor—at least in cases of partial restraint—to show the unreasonableness (*u*). The test will be whether the limit imposed is in excess of what is required for the protection of the party in favour of whom it is made, and is injurious, or not, to the public interests (*x*). “Whatever restraint,” it has been said, “is larger than the necessary protection of the party, can be of no benefit to either; it can only be oppressive; and, if oppressive, it is in the eyes of the law unreasonable” (*y*). Agreements not to carry on business of perfumer and hair merchant within London or Westminster, or 600 miles from the same (*z*); not to be employed as coal merchants for nine months (*a*); not to carry on trade as brewer, &c. in Sheffield or elsewhere for ten years (*b*), have been held void. On the other hand, agreements by vendors of a patent process of manufacture, not to carry on in any part of Europe a manufacture with the same object as the patent (*c*); not to carry on business as a surgeon within ten miles of a place for fourteen years (*d*); not to practise as attorney within London or 150 miles of it (*e*); not to carry on business in horsehair within 200 miles of Birmingham (*f*); not to carry on trade as a milkman for twenty-four months within five miles of Northampton Square (*g*), have been held valid. In *Nordenfelt v. Maxim Nordenfelt, &c. Co.* (*h*), the law on this point was considered by the House of Lords, when the whole doctrine and the principal authorities were examined. The covenant in that case was unrestricted as to space; but it was upheld as valid and enforceable by injunction. Lord Herschell,

(*u*) *Rousillon v. Rousillon* (1880), 14 Ch. D. 351, at p. 365; *Haynes v. Boman*, [1899] 2 Ch. 13, per Romer, L. J., at p. 30; *Badische Anilin v. Schott*, [1892] 3 Ch. 447; and the remarks of Bowen, L. J., in *Nordenfelt's Case*, [1893] 1 Ch., at pp. 654—656; but see the judgment of Vaughan Williams, L. J., in *Underwood v. Barker*, [1899] 1 Ch. 300, at pp. 314, 315.

(*x*) *Hitchcock v. Coker* (1837), 6 A. & E. 438, per Tindal, C. J., at p. 454; *Rousillon v. Rousillon* (1880), 14 Ch. D. 351; *Mills v. Donham*, [1891] 1 Ch. 576; *Badische Anilin, &c. v. Schott*, [1892] 3 Ch. 447; *Nordenfelt v. Maxim Nordenfelt, &c. Co.*, [1891] A. C. 535; *Underwood v. Barker*, [1899] 1 Ch. 300.

(*y*) *Tindal, C. J.*, in *Horner v. Graves* (1831), 7 Bing. 35, 743; see also Parke, B.'s, judgment in *Matlow v. May* (1843), 11 M. & W. 653.

(*z*) *Price v. Green* (1839), 16 M. & W. 346.

(*a*) *Ward v. Byrne* (1839), 5 M. & W. 548.

(*b*) *Hinde v. Gray* (1840), 1 M. & G. 195.

(*c*) *Leather Cloth Co. v. Lonsont* (1869), L. R. 9 Eq. 345.

(*d*) *Davis v. Mason* (1793), 5 T. R. 118.

(*e*) *Bunn v. Guy* (1803), 4 East, 190.

(*f*) *Harms v. Parsons* (1862), 32 Beav. 328.

(*g*) *Proctor v. Sargeant* (1840), 2 M. & G. 20. As to what is meant by “carrying on business,” see *Turner v. Evans* (1852), 2 E. & B. 512; *Avery v. Langford* (1854), 23 L. J. Ch. 837; *Jones v. Hearn* (1877), 4 Ch. D. 636. As to mode of measurement of distance, *Atkins v. Kemmer* (1850), 19 L. J. Ex. 132; *Duignan v. Walker* (1859), 28 L. J. Ch. 867; *Mouffet v. Cole* (1872), L. R. 8 Ex. 32.

(*h*) [1894] A. C. 535.

discussing the distinction between "general" and "partial" restraints, said (p. 548) :—

Whether the cases in which a general covenant can now be supported are to be regarded as exceptions from the rule, which I think was long recognised as established, or whether the rule is itself to be treated as inapplicable to the altered conditions which now prevail, is probably a matter of words rather than of substance. . . . When once it is admitted that, whether the covenant be general or particular, the question of its validity is alike determined by the consideration whether it exceeds what is necessary for the protection of the covenantee, the distinction between general and particular restraints ceases to be a distinction in point of law.

Lord Watson (at p. 554) says :—

A restraint which is absolutely necessary in order to protect a transaction which the law permits in the interest of the public ought to be regarded as reasonable, and cannot, in deference to political ideas which are now obsolete, be regarded as in contravention of public policy.

Regard must be had to the changing conditions of commerce (*i*) ; and the "general" or "partial" character of the covenant (*k*), as well as the particular kind of business in question, are matters material to the question of "reasonableness" (*l*). For instance, the protection of a general restraint may well be necessary to the purchase of a secret process (*m*).

If there be occupations where a sale of the goodwill would be greatly impeded, if not prevented, unless a general covenant could be obtained by the purchaser, there are no grounds of public policy which countervail the disadvantage which would arise if the goodwill were in such cases rendered unsaleable (*n*).

(*i*) Per Lord Herschell in *Nordenfelt's Case*, at p. 547 ; per Lord Watson, *ibid.*, at p. 553 ; per Lord Macnaghten, *ibid.*, at p. 571 ; *Badische, &c. v. Schott*, [1892] 3 Ch. 447, at p. 452.

(*k*) *Proctor v. Sargent* (1810), 2 M. & G. 20 ; *Badische Anilin v. Schott, l. c.* ; *Nordenfelt's Case, l. c.*, pp. 548, 549, 553, 554, 568 *et seq.* ; *Haynes v. Doman*, [1899] 2 Ch. 13 ; *Hood v. Jones*, [1899] 81 L. T. 169.

(*l*) In *Leatham v. White*, [1907] 1 Ch. 322, the Court of Appeal held a covenant unreasonable and void on the ground that the restraint extended to businesses in which the employers were interested as well as their own particular business. See the remarks of Neville, J., on this decision, and restraint of trade generally, in

Dottridge v. Crook (1907), 23 Times L. R. 614.

(*m*) *Leather Cloth Co. v. Lonsont* (1869), L. R. 9 Eq. 345 ; *Bryson v. Whitehead* (1822), 1 Sim. & St. 74 ; *Haynes v. Doman*, [1899] 2 Ch. 13 (a contract of service. . . See also the remarks of Parke, B., in *Mallan v. May* (1843), 11 M. & W. 653, at pp. 665, 666, quoted by Erle, C. J., in *Mumford v. Gething* (1859), 7 C. B. N. S. 305, at p. 320. See as to injunctions against servants to prevent the use of knowledge gained during service, p. 176, *infra*).

(*n*) Per Lord Herschell in *Nordenfelt's Case, l. c.*, at pp. 548, 549 ; *Badische Anilin v. Schott*, [1892] 3 Ch. 447 ; in both of which cases the world-wide character of the business was made an important consideration.

The question is:—Is the contract reasonable at the time it is made, without regard to contingencies which may make it unreasonable (*o*)?

It may be that a covenant, reasonable for the protection of the covenantee, may still be void as being injurious to public interests.

There may, as I understand the law, be cases in which, even though the restraint is not unreasonable in the interests of the parties concerned, it may of itself be of such a character as to be injurious to the public, and in such cases again the restraint is void (*p*).

There must be a consideration for a contract in restraint of trade. It was once supposed that the consideration must be "adequate." It has, however, long been settled that the Courts will not inquire into the adequacy or sufficiency of the consideration (*q*). It is enough that it is not merely nominal or colourable. The mere continuance of the engagement (*r*) is good consideration for such a covenant, as is the original engagement itself (*s*).

These contracts are to be interpreted by the ordinary canons of construction; therefore general words such as "business"—"call upon or solicit orders"—"in any way deal or transact business with"—have been construed by reference to the plaintiff's particular business, or the locality where it is being carried on (*t*).

In covenants of this character, the good is severable from the bad part, but only if "the Court find in the agreement itself sufficient ground for making the severance" (*u*).

(*o*) *Rannie v. Irvine* (1844), 7 M. & G., at p. 976; *Nordenfellt's Case*, *l. c.*, per Lord Macnaghten, at p. 574; *Haynes v. Doman*: see note (*k*).

(*p*) Per Walton, J., in *Tivoli, &c. v. Colley* (1904), 20 Times L. R. 437. See per Lord Herschell in *Nordenfellt's Case*, *l. c.*, p. 549; per Lord Macnaghten, *ibid.*, p. 565; per Bowen, L. J., in the same case in C. A., [1893] 1 Ch. pp. 667, 668.

(*q*) *Hitchcock v. Coker* (1837), 6 A. & E. 438; *Archer v. Marsh* (1837), 6 A. & E. 959; *Pilkington v. Scott* (1846), 15 M. & W. 657; *Gravelly v. Barnard* (1874), L. R. 18 Eq. 518. Even when the covenant is under seal there must be consideration; *Hutton v. Parker* (1839), 7 Dowd. 739; otherwise, *semble*, the covenant would be *unreasonable*. See notes on *Mitchell v. Reynolds*, 1 Sm. L. C. (11th ed.), p. 406.

(*r*) *Gravelly v. Barnard*, see note (*q*); *Hood v. Jones* (1899), 81 L. T. 169.

(*s*) *Saunter v. Ferguson* (1849), 7 C. B.

716; *Davis v. Mason* (1793), 5 T. R. 118; *Bowell v. Inns*: see note (*x*); *Mumford v. Gerthing* (1859), 7 C. B. N. S. 305; *Gravelly v. Barnard*: see note (*q*).

(*t*) *Mills v. Donham*, [1891] 1 Ch. 576; *Perls v. Saalfeld*, [1892] 2 Ch. 149; *Dubowski v. Goldstein*, [1896] 1 Q. B. 478; *Moornich v. Fenestre* (1892), 61 L. J. Ch. 737 ("any trade or business"); *Avery v. Langford* (1854), 23 L. J. Ch. 837 ("any trading establishment"); *Hood v. Jones* (1899), 81 L. T. 169 ("business").

(*u*) Per Chitty, J., in *Mills v. Donham*, [1891] 1 Ch., at p. 580; see *Price v. Green* (1847), 16 M. & W. 346; *Mallan v. May* (1843), 11 M. & W. 653; *Nicholls v. Stretton* (1847), 10 Q. B. 346; *Baines v. Geary* (1887), 35 Ch. D. 154; *Baker v. Hedgcock* (1888), 39 Ch. D. 520; *Perls v. Saalfeld*, [1892] 2 Ch. 149; *Rogers v. Maddocks*, [1892] 3 Ch. 346; *Nordenfellt's Case* (in C. A.), [1893] 1 Ch. 630; *Underwood v. Barker*, [1899] 1 Ch. 300; *Davies v. Lowen* (1891), 64 L. T. (N. S.) 655.

Covenants in restraint of trade may be enforced by the assignees of the business, for the protection of which they were obtained (*x*), save where they are of a purely personal character (*y*), or by the personal representatives of the covenantee (*z*).

A covenant of this character cannot be enforced by an employer who has terminated the contract of service by wrongful dismissal (*zz*).

A group of cases akin to the above is formed by those involving the validity of agreements to regulate business, to determine hours of work, wages, and strikes according to the decision of the majority. The Courts have treated such schemes as in restraint of trade. In *Collins v. Locke* (*a*), the facts were as follows:—

Certain persons carrying on the business of stevedores in Melbourne entered into an agreement with a view to prevent competition. One provision was that, if any merchant refused to allow the stevedoring of any ship consigned to them to be done by the party entitled to it under the agreement, but should require any other of the parties to the agreement to do it, the party doing the work should give an equivalent to the persons so losing the stevedoring of an amount to be determined by arbitration. The Privy Council thought this not unreasonable.

It provides in a fair and reasonable way for each party obtaining the benefit of the stevedoring of the ships to which by the contract he was to be entitled. Each party might in turn derive benefit from this clause, and one of the four firms would always get the profit of the ship stevedored, though the work might be done by another of them. As regards the merchant, also, he can have his ship stevedored by the party whom he may require to do it; at least, there is no prohibition against his having it so done (*b*).

Another provision in the agreement was, that the parties to it would not “undertake or be in any way concerned in or interfere in the stevedoring, either in whole or in part, of any ship or vessel consigned to any of the said persons or firms otherwise than according to the provision in that behalf hereinbefore contained.”

The covenant in such cases restrains three of the four parties to the agreement from exercising their trade, without giving any profit or benefit to compensate for the restriction to either of the four, whilst

(*x*) *Bonwell v. Innes* (1857), 24 Beav. 307; *Bacons v. Peary* (1887), 35 Ch. D. 154, at p. 153; *Jacoby v. Whitmore* (1883), 49 L. T. (N. S.) 335; *Hood v. Jones* (1899), 81 L. T. (N. S.) 169.

(*y*) *Davies v. Davies* (1887), 36 Ch. D. 359.

(*z*) *Archer v. Marsh* (1837), 6 A. & E.

959; *Green v. Price* (1845), 13 M. & W. 695; 10 M. & W. 346.

(*zz*) *General Bill-posting Co. v. Atkinson*, [1908] 4 Ch. 537.

(*a*) (1879), 4 A. C. 674. The subject is fully discussed with reference to trade unions at p. 570, *infra*.

(*b*) *l. c.*, p. 687.

the combination they have thus entered into is obviously detrimental to the public, by depriving the merchants of the power of employing any of these parties, who are probably the chief stevedores of the port, to load their ships, unless in each case they employ the one of the four to whom the ship, as between themselves, has been allotted, however great and well founded their objection may be to employ him. Such a restriction cannot be justified upon any of the grounds on which partial restraints of trade have been supported. It is entirely beyond anything the legitimate interests of the parties required, and is utterly unprofitable and unnecessary at least for any purpose that can be avowed (c).

APPENDIX.

Cases on Mutuality (pp. 93 et seq.).

NO CONSIDERATION.

Lees v. Whitcomb (1828), 5 Bing. 34. Defendant signed a written agreement to the following effect: "I agree to remain with Mrs. Lees, of 302, Regent Street, for two years from the date hereof, for the purpose of learning the business of a dressmaker." No binding agreement; there being no obligation to teach, and no consideration being expressed.

Sykes v. Dixon (1839), 9 A. & E. 693. Memorandum of an agreement in the following terms: "I, William Bradly, of Sheffield, do agree that I will work for you and with John Sykes, of Sheffield, manufacturer of powder-flasks, at such work as he shall order and direct, and no other person whatsoever from this date henceforth during and until the expiration of twelve months, and so on from twelve months' end to twelve months' end, until I shall give the said John Sykes twelve months' notice in writing that I shall quit his service." Agreement was a *nudum pactum*, and could not be enforced.

Williamson v. Taylor (1843), 5 Q. B. 175. Defendants, owners of a colliery, hired plaintiff to hew coals at certain rates, according to work done, and plaintiff agreed to continue defendants' servant all the time the pit

CONSIDERATION.

Pilkington v. Scott (1846), 15 M. & W. 657. Plaintiffs agreed with L. that he should serve them for seven years; that he should not during that term work for any other person without the license of the plaintiffs; that it should be lawful for the plaintiffs to deduct from his wages any fines, &c.; and that the plaintiffs should have the option of dismissing him from their service on giving a month's notice or a month's wages. *Held*, that, looking to the provisions of the agreement, there was an undertaking to employ L. for seven years.

Hartley v. Cummings (1847), 5 C. B. 247; 17 L. J. C. P. 84. Agreement between plaintiff and A. that A. should serve for seven years at a given rate of wages, and not work or serve any other person without master's consent; in consideration of which plaintiff agreed to pay A. 24s. per week for certain work; plaintiff to be at liberty, if A. were sick, or if A. discontinued the trade, to retain any other person in A.'s place, without paying him wages. The agreement not void for want of mutuality or for being in unreasonable restraint of trade.

R. v. Welch (1853), 2 E. & B. 357; 22 L. J. M. C. 145. R. Whitaker, in consideration of 3*l.* lent or ad-

NO CONSIDERATION.

should be laid off work, and, when required, to do a full day's work on every working day. Defendants not obliged to employ plaintiff for a reasonable number of working days during the term.

Asplin v. Austin (1844), 5 Q. B. 671. The plaintiff agreed to manufacture for the defendant cement, and the defendant, on condition of his faithfully performing the aforesaid contract, covenanted to pay the plaintiff the weekly sum of 4*l.* during the two years following the date of the agreement, and the weekly sum of 5*l.* during the next year following, and to receive him into partnership, &c. at the expiration of three years. Plaintiff also agreed to instruct defendant in the art of manufacturing cement on condition that defendant should not engage in the manufacture otherwise than under plaintiff's management or with his consent. By a deed subsequently executed, defendant covenanted with plaintiff to perform the several stipulations and agreements in the first agreement. Breach alleged, that defendant wrongfully discharged plaintiff from the service of defendant, and prevented him from manufacturing cement, &c. No implied covenant to retain the plaintiff two or three years in the defendant's service, though the defendant was bound by the express words to pay the plaintiff the stipulated wages during those periods, if he performed, or was ready and willing to perform, the condition precedent on his part. The principle affirmed in the case is highly doubtful. The Courts to-day would no doubt imply a covenant to retain.

Dunn v. Sayles (1844), 5 Q. B. 685. Deed by which plaintiff covenanted that his son should serve the defendant for five years from the date of the agreement in the art of a dentist-surgeon, and attend for nine hours a day, and the defendant, in consideration of the services to be performed by the plaintiff's son, covenanted to pay certain wages. Breach, that the defendant refused to permit the son to remain in his service. *Held*, on motion in arrest of judgment, that there was no covenant corresponding

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vanced to him by certain persons mentioned in the agreement and of wages to be paid by them, agreed to serve them and no one else, without their consent, for twelve months and during and until the expiration of three months from notice of his desire to terminate the service. The employers agreed to pay on Saturday night in every week during the term all such wages as the articles made by Whittaker amounted to. There was a proviso that either party to the agreement might, after twelve months, give three months' notice. *Held*, that the agreement might be enforced by magistrates under the 4 Geo. IV. c. 34, and was not void for want of mutuality.

Elderton v. Emmons (1847), 4 C. B. 479; (1848), 6 C. B. 160; (1853), 4 H. L. Cas. 624. Count in a declaration on assumpsit on an agreement that in consideration that the plaintiff had agreed to become the permanent solicitor of the defendant's company for reward, &c., the company promised to retain and employ the plaintiff as such permanent solicitor, &c. Breach, that the company wrongfully refused to continue him in his employment as the solicitor of such company. This count not supported by proof of a resolution that plaintiff "be appointed permanent solicitor to the company"; "permanent" meaning "no other than a general employment, as distinguished from an occasional employment in particular matters": *Wilde, C. J.* Second count on an agreement that, "from January then next the plaintiff, as the attorney and solicitor of the company, should receive a salary of 100*l.* per annum in lieu of rendering an annual bill of costs for general business transacted by him for the company as such attorney and solicitor, and should for such salary advise and act for the company on all occasions in all matters connected with the company, and he should attend the secretary and the board of directors when required." The Court of Common Pleas arrested judgment on a count for wrongful dismissal setting forth this agreement. The Exchequer Chamber reversed the judgment of the Common Pleas; the

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to the breach. See, however, *McIntyre v. Belcher*, 32 L. J. C. P. 254; *Worthington v. Sudlow*, 31 L. J. Q. B. 134; and Crompton, J., in *Emmeus v. Elderton*, 4 H. L. Cas. p. 624.

Payne v. New South Wales Coal, &c. Co. (1854), 10 Ex. 283. Defendants agreed with plaintiffs that plaintiffs should have defendants' ship-brokering business at Sydney upon certain terms, and that defendants would provide plaintiffs with free passage to that port; void, plaintiffs not being bound to serve defendants.

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House of Lords affirmed the judgment of the former. The company was bound to continue the relation for a year, but not bound to supply plaintiff with business as solicitor, or employ him when it had occasion to employ solicitor.

Whittle v. Frankland (1862), 31 L. J. M. C. 81. Agreement by appellant to serve the respondent exclusively until the expiration of twenty-eight days' notice, and, on the part of the respondents, to pay wages fortnightly, and not to discharge without twenty-eight days' notice; implied promise to find appellant work.

Thomas v. Virgin (1873), 37 J. P. 228. T. agreed to serve V. for a year; but if V. ceased to carry on works from being unable to find ore, or from any other cause, V. to be at liberty to terminate the contract. See also *Ex parte Bailey* (1854), 3 E. & B. 607.

CHAPTER IX.

WAGES AND REMUNERATION.

It is impossible to state all the duties of masters and servants. They vary with the nature of the employment; they are regulated partly by usage; they are also laid down in a multitude of Acts of Parliament; they may be contained in the "shop rules" or "working rules," sliding scales and awards of arbitrators with reference to which contracts of service are made. A few of the principal duties of masters at Common Law are here stated. They correspond to rights belonging to their servants. They are implied in all contracts of hiring and service, and, unless the contrary be stipulated, they are part alike of written and verbal contracts.

It is the duty of a master to pay to his servant the wages (*a*) or salary agreed upon. No presumption that wages or salary is payable arises from the mere fact that services are performed or work is done for another.

It is not certain that the second of these propositions expresses correctly the purport of the authorities. They are not quite consistent. Thus, in Viner's Abridgment (*b*), it is said that "every

(*a*) In the Truck Act, 1831 (s 25), "wages" is defined as "recompense . . . for . . . labour." Read strictly, this would exclude anything but "wages" in the narrowest sense of the word. See *Chauncer v. Commins* (1845), 15 L. J. Q. B. 161; *Archer v. James* (1862), 31 L. J. Q. B. 153, and the notes on the Truck Act, p. 331, *infra*. See as to "sliding scales" of wages, *Royal Commission on Labour*, 1892, Group A, vol. i. p. 482. Sometimes a copy of the sliding scale is printed and put in the "contract-book," which is signed by each workman. The following is an

example: "The standard of wages upon which future advances and reductions are to be made shall be the several rates actually paid at the respective collieries for the month of December, 1879; and such wages shall be equivalent to a standard nett selling price of 7s. 10½*d.* to 8s. a ton." As to "earnings" in the Workmen's Compensation Act, 1897, Sched. I. (1) (*iv*), see *Abraham Coal Co. v. Southern*, [1903] A. C. 306.

(*b*) Vol. v. p. 362, citing *Pinchon's Case*, 9 Rep. 86 b (which seems scarcely in point). See Le Blanc, J., in *R. v. Shinfield* (1811), 14 East, 547.

such retainer (as a servant) will be presumed to be in consideration of wages unless the contrary appears." It has been said, too, that when a man bestows his labour for another, he has a right to recover compensation for that labour (*c*). On the other hand, there are authorities which go to show—and this seems the true view—that service, however long continued, creates no claim for remuneration without a bargain for it, either expressed, or implied from circumstances showing an understanding on both sides that there should be payment (*d*). It is highly doubtful whether there exists any presumption on the subject; if it exist, it is not irrebuttable.

Service is usually performed in the expectation of receiving wages, and in most cases it would be correct, looking to usage, to say that there was an implied promise to pay them. But one may serve another out of gratitude or affection; one may intrude one's services upon another, or render them without his privity or assent. It is not uncommon for persons to work for years in the mere hope that they will be remembered by a testator in his will. A person, too, may serve for a time on the understanding that he is on probation, and that nothing is to be paid to him in the meantime. In every contract of hiring and service are presumed a request and promise to pay; but in a multitude of cases there is, in fact, neither request nor promise. Often the parties never give a thought to their legal position until their relation is ended by a quarrel or death. The question is one of fact: was there an agreement or

(*c*) *Poucher v. Norman* (1825), 3 B. & C. 744 (action by certificated conveyancer for work done): "The general rule," said the Court, "is, that any man who bestows his labour for another has a right of action to recover compensation for the labour. There are two exceptions to that rule, viz., physicians and barristers."

(*d*) *Martin, B.*, in *Reeve v. Reeve* (1858), 1 F. & F. 280, and *Ford v. Morley* (1859), 1 F. & F. 496; see also *Higgins v. Hopkins*, note (*c*). Slaves who came to this country, and who brought actions in the time of Lord Mansfield and Lord Kenyon against their masters for remuneration, were always non-suited in the absence of proof of a special agreement to pay. *Rex v. Thames Dutton* (1785), 4 Doug. 300; *Alfred v. Fitzjames* (1799), 3 Esp. 3. In the latter case a promise to pay wages was proved, and it might be inferred that, previous to the promise, no

remuneration was intended. See as to the contrary doctrine in the American Courts, Wood, 107. The bias of our Courts against inferring a promise to pay from the mere fact that services are rendered, is shown by *Lamborn v. Cruden* (1841), 2 M. & G. 253. (Servant engaged at a yearly salary payable quarterly; about a month after the termination of one of the years of his service, he tendered his resignation; after another month the resignation was accepted; nothing was said as to the remuneration for the time which had elapsed since the termination of the last year's service. *Held*, that "no new contract arises by implication of law upon a simple dissolution of a special contract of hiring and service, in respect of services performed under such special contract previously to its being dissolved.") See, on the other hand, *Bayley v. Rimmell* (1836), 1 M. & W. 506.

distinct understanding that the person who does the work should be remunerated? Obviously this can be determined only by considering the whole circumstances, the situation and relationship and condition of the parties; and the character and value of the services performed. When people do work for another with his knowledge—say, labour in his fields, or paint his house—they, as a rule, expect to be paid for it; the law will infer a promise to pay for such work (*e*). But this is not inevitable; and the true view seems to be, that if a person “does work on the order of another, under such circumstances that it must be presumed that he looks to be paid *as a matter of right* by him, then a contract would be implied with that person” (*f*). This rule may not be of much assistance in determining cases as they arise; it is difficult to state any clearer rule as to the circumstances in which the law will raise an implied promise to pay (*g*).

Work done for Relatives and Friends.

Frequently, when work is done for relatives or friends, it is hard to say whether wages or remuneration is due. The difficulty is one not of law, but of fact, which it is for a jury, on a review of the whole circumstances, to settle. In several American cases, attempts are made to lay down rules of law as to the circumstances in which it is proper, and as to the relatives for whom it is right to presume that services are or are not rendered for hire. “In all cases,” says Mr. Wood, in his *Law of Master and Servant* (*h*), summarising several decisions, “where compensation is claimed for services rendered for near relatives, as a father, brother, grandfather, &c., the law will not imply a promise, and no recovery can be had unless an express contract, or circumstances equivalent thereto, is shown.” “Where the parties stand to each other in the relation of members of the same family, as brothers, father and son, or father and

(*e*) *Higgins v. Hopkins* (1848), 3 Ex. 166.

(*f*) The words of Pollock, C. B., *arguendo* in *Taylor v. Laird* (1856), 25 L. J. Ex. 329, 332, may be quoted: “One cleans another’s shoes; what can the other do but put them on? Is that evidence of a contract to pay for cleaning?” See *Bradshaw v. Hayward* (1842), Car. & M. 591; *Stoke v. Pitminster* (1726), 2 Bott. 183; *R. v. Weyhill* (1759), 2 Bott. 185.

(*g*) In the case of arbitrators it was early decided that, apart from particular

circumstances showing an intention to pay them or an express promise to do so, the office was an honorary one: *Vivany v. Warne* (1801), 4 E-p. 17. But recently, in a case of a business arbitration, the arbitrator and umpire, who were neither friends of the litigants nor members of the legal profession, recovered their fees, it being held that there was, in such a case, an implied promise to pay for their services: *Cramp-ton and Holt v. Ridley* (1887), 29 Q. B. D. 48.

(*h*) p. 115.

daughter; or, if inmates of the same family, though only remotely related, there is *prima facie* no implied promise to pay for labour done" (i). All attempts to lay down any rule based upon relationship are, it is submitted, futile. A son renders services to his father; a sister acts as housekeeper to a bachelor brother; a daughter remains in her father's house after coming of age, and does household work; a granddaughter goes to reside with her grandfather (k); it is impossible in such cases to determine solely from the relationship of the parties whether there is a right to payment. An endless variety of circumstances may affect the answer to the question whether there is a contract. Probably no clearer principle can be stated than that which is laid down in *Davies v. Davies* (l). The plaintiff and his wife, who boarded and lodged in the house of the defendant, the brother of the plaintiff, and assisted him in his business, sued for reward for their services. The defendant pleaded a set-off for board and lodging. In leaving the question to the jury, Williams, J., said, "Neither the services on the one hand, nor the board and lodging on the other,

(i) Wood, *Law of Master and Servant*, p. 121. At what degree of relationship does the presumption begin or end? Does it extend to work done by a niece for an aunt or uncle? After much vacillation on the subject, the Scotch Courts have, according to Lord Fraser (*Treatise of Master and Servant*, 2nd ed. p. 21), finally adopted the view that, "when there is a clear proof of service rendered, and no wages paid, wages are due, unless it be made out that there was an agreement that the services should be gratuitous." See *Anderson v. Halley* (1847), 9 D. 1222; *Thomson v. McBain* (1889), 16 R. (4th ser.) 333; but see *Miller v. Miller* (1898), 25 R. (4th ser.) 995.

(k) See the following American cases: *Ridgway v. English*, 22 N. J. 409; *Davis v. Goodenow*, 27 Vt. 715; *Robinson v. Cushman*, 2 Denio, 149.

(l) (1839), 9 C. & P. 87. The following are some decisions to the same effect: *Jewry v. Bask* (1814), 5 Taunt. 302. (Defendant promised to make to the plaintiff, a glazier, if he would take care of plaintiff's house, open the windows, air it, and show it to persons who applied to see it, a handsome present, and subsequently gave him 2*l*. Mansfield, C. J., thought there was no evidence of a contract, and that the plaintiff trusted to defendant's generosity. The jury, however, gave a verdict for the plaintiff; and the Court thought that there was evidence of a

contract to do the work for a reasonable recompense.) *R. v. Sow* (1817), 1 B. & Ald. 178. (An illegitimate child, hired for a year by the wife of the reputed father at 50*s*. wages, continued for three years to do work, but, after the first year, was not paid wages; *held*, that the sessions were warranted in finding that, after the first year, she was living as a child with her father, and not as a servant with her master. See remarks of Bayley, J.) *Bradshaw v. Haywood* (1842), Car. & M. 591. (Action for wages by female servant against defendant, an innkeeper; Cresswell, J., told the jury that the question was whether there was a contract of hiring or not, and allowed the defendant's counsel to cross-examine as to whether plaintiff was not defendant's mistress, with a view to show that there was no contract of service.) *Foord v. Morley* (1859), 1 E. & F. 496. (Plaintiff lived with defendant as a housekeeper; nothing said as to wages; but plaintiff received board and lodging, and was at liberty to keep fowls, &c. Plaintiff left defendant, but returned, and nothing was said as to wages: ruled by Martin, B., that it was for the plaintiff to establish that there was an understanding or contract as to whether she should be paid wages.) See also *R. v. St. Mary*, 2 Boll. 275; *R. v. Stokesley* (1796), 6 T. R. 757; *R. v. Longichatton* (1793), 5 T. R. 447. As to board, *Nichols v. Coolahan*, 10 Met. Mass. 449.

can be charged for, unless the jury are satisfied that there was a contract." Such a contract must, it is submitted, be proved, in the ordinary way.

Work done by Persons of Skill in the Exercise of their Profession.

English law knows almost nothing of the difference between liberal and illiberal professions, which plays so important a part in Roman law. In the latter the *liberalia studia* included the professions of rhetoricians, grammarians, geometers, secretaries, librarians, schoolmasters (*m*); for their services no remuneration was presumed. With the exception of the services of barristers, already referred to, no such distinction exists in English law. Perhaps, indeed, a difference of fact may exist between certain kinds of skilled and unskilled labour. The latter may more often be given gratuitously. In the great majority of instances, a person who does work and employs professional skill for the benefit of another, will be entitled to reasonable remuneration, even if there be no express agreement; the inference being generally irresistible in regard to skilled work, that it was understood such services were to be paid for (*n*). Here, too, however, there is no absolute presumption in law.

Remuneration left to Employer's Discretion or Arbitrament of Third Person.

It may be plain that the intention was to pay wages for services, and nothing be agreed as to their rate or amount. In such a case the law will imply an agreement to pay what is reasonable, having regard to local usages, the current rate of wages, the skill of the workman, and the nature of the work.

(*m*) Dig. 50, 13, 1; and see *Kennedy v. Brown* (1863), 13 C. B. (N. S.) 677.

(*n*) *Brown v. Nairne* (1839), 9 C. & P. 264. (Action by broker for procuring charter; no special agreement as to remuneration; left to the jury to say what was the customary remuneration, or, if no custom, what was reasonable remuneration.) *Hingston v. Kelly* (1849), 18 L. J. Ex. 360. (Action for work and labour by an attorney who had rendered professional services to defendant at a contested election; evidence by defendant that the services

were rendered gratuitously; direction by the judge that the plaintiff was entitled to a verdict unless the defendant made out that the services were to be given gratuitously; *held*, a misdirection, and the true question for the jury was, whether, taking all the evidence together, the plaintiff was to be paid for his services. Baron Parke's dictum, "If the defendant makes it doubtful only whether the services were to be gratuitous, it is enough," seems open to question. The rule seems to be that the burthen of proof is always on the plaintiff.)

A servant may leave it to the discretion of his employer to say whether he is to be paid. If it be clear from the terms of the agreement or the whole circumstances that the employer is the sole judge whether any and, if so, what remuneration is to be paid, no action will lie: the servant cannot even claim to recover reasonable remuneration for what he has done. *Nulla promissio potest consistere, quæ ex voluntate promittentis statum capit.* Thus, a person who had rendered services to a committee under a resolution that "any service to be rendered by him should be taken into consideration, and such remuneration be made as should be deemed right," was incapable of recovering for his services (o). It is a question for the judge, if the contract be in writing, and for the jury, if otherwise, to say what was the intention of the parties, and whether it was intended that remuneration should be claimed as a right.

If wages or remuneration are made dependent on the certificate of a third person, it must be procured before an action can be brought. In other words, the obtaining of the certificate is a condition precedent. Thus, in *Owen v. Bowen* (p), where the agree-

(o) *Taylor v. Brewer* (1813), 1 M. & S. 290; see also *Peacock v. Peacock* (1809), 2 Camp. 65. (A law-stationer said to his son, on his coming of age: "You shall have fifteen shillings a week until October; the books must then be made up, and you shall have a share; we need not talk of the share until October comes; we shall settle it then;" held by Lord Ellenborough that the son was entitled to some share, and that it was for the jury to say what was a just and reasonable proportion.) *Bryant v. Flight* (1839), 5 M. & W. 114. (Plaintiff wrote to defendant as follows: "I hereby agree to enter your service as a weekly manager, commencing next Monday, and the amount of payment I am to receive I leave entirely to you;" held (Parke, B., dissenting), that the defendant was bound to pay the plaintiff something for his trouble, and that the jury, in an action on a *quantum meruit*, might decide what the defendant, acting *bonâ fide*, would or ought to have awarded.) *Roberts v. Smith* (1859), 4 H. & N. 315. (Plaintiff agreed to accept post of secretary to a company at a salary of two hundred pounds, "commencing at the present date, if the company be completely registered, and put into operation; if not, I shall be satisfied with any remuneration for my time and trouble you may think me

deserving of and your means can afford." Defendant replied: "It is distinctly agreed and understood that if the company is not formed and carried out, that part of your letter which alludes to your salary be null and void, and that at the expiration of three months it is entirely left to me to give unto you such sum of money as I may deem right as compensation for labour done, in the event of the company not being carried out, or of making any further advance for the continuing of the same." The company was not registered or "carried out." No action lay for salary or compensation.) *Ex parte Metcalfe* (1856), 6 E. & B. 287. (Refusal to grant mandamus to Local Board of Health to pay reasonable remuneration to a person who presided at the first election of the board; the board having, under the 11 & 12 Vict. c. 63, s. 30, discretion as to what they thought reasonable.) *Bird v. McGahey* (1849), 2 C. & K. 707; *Rawlings v. Chandler* (1854), 9 Ex. 687.

(p) (1829), 4 C. & P. 93; see also *London Tramway Co. v. Bailey* (1877), 3 Q. B. D. 217; and as to the power, under the Master and Servant Act, 1867, and Employers and Workmen Act, 1875, to rescind arbitration clauses: *Wilson v. Glasgow Tramway Co.* (1878), 5 R. 981.

ment was that the amount of remuneration should be left to a third person, an action for the recovery of wages failed because it did not appear that he had been requested to fix the wages. So, in *Morgan v. Birnie* (g), an action having been brought against the defendant, who had agreed to pay for buildings erected by the plaintiff, on production of the architect's certificate that the work was done to his satisfaction, it was not sufficient that the architect had checked the plaintiff's charges and had sent them to the defendant; there was no certificate, and the action therefore did not lie (r).

Gratuities, and Work done in Expectation of Legacies.

No action will lie to recover gifts or gratuities. It is not always easy, however, to ascertain what are gifts or gratuities; that a particular sum is spoken of as a gratuity does not necessarily decide that it is not of the nature of wages (s). Presents or gratuities to a servant under age cannot be deducted by a master from wages. Thus, in one case in which a master gave to a maid of all work a silk dress, and paid for coach fares to her mother's house, it was held that he could not deduct these sums from her wages (t).

Sometimes a share in the profits forms part of the remuneration (u); or there is an express contract to pay a bonus, though more often such bonus is given gratuitously. Sometimes there is a contract to pay by way of premium an additional sum for extraordinary care and intelligence; or there is an "allowance," e.g., to miners in respect of the difficulties or dangers of a particular seam. Certain servants—some classes of waiters, for example—are paid no wages; they depend on "tips" from customers; they

(g) (1833), 9 Bing. 672; *Moffatt v. Dickson* (1853), 13 C. B. 375; *Forbes v. Milne* (1827), 6 S. 75. (Lady engaged a servant on condition that he obtained a certificate of character from his last employer; no cause of action unless such certificate obtained.)

(r) An action will lie against an architect for fraudulently refusing to certify (*Ludbrook v. Barrett* (1877), 46 L. J. C. P. 798); or against the employer of the architect for procurement of or collusion in the fraudulent refusal to certify: *Batterbury v. Lyse* (1863), 32 L. J. Ex. 177. See Hudson on *Building Contracts* (3rd ed.), pp. 415—418. If the third person is in the

position of a judge, he must act as a judge ought, in accordance with the principles of natural justice: *Armstrong v. South London Tramways Co.* (1890), 61 L. T. 96.

(s) *Lake v. Campbell* (1862), 5 L. T. (N. S.) 583; *Parker v. Ibbetson* (1858), 27 L. J. C. P. 236.

(t) *Hedgley v. Holt* (1829), 4 C. & P. 104.

(u) See pp. 44—45, *supra*. In *The Blessing* (1878), 3 P. D. 35, remuneration out of the profits of a fishing voyage was held to be wages as to which the County Court had jurisdiction. The servant in such a case has a right to an account.

are, to use the expression of Littledale, J., "servants upon expectation of gratuities" (*x*); other servants depend more or less on gratuities from masters (*y*). In many working rules are promises of certain extras, *e.g.*, "walking time," "lodging money," "grinding money," "black money," or "dirty money," or injury to clothes.

We need not examine here all the decisions as to services rendered in expectation of a legacy. Few general principles can be extracted from the authorities. The question in every case appears to be whether the person who rendered the services trusted to the generosity of him for whom he worked, or whether there was an implied understanding (or, to be more accurate, a contract), that remuneration was to be given him (*z*). If the work were done on the strength of the expectation of a legacy, and executors were to pay such claims, they might be disallowed in their accounts (*a*).

Remuneration for Work done under a Contract Terminated by Mutual Consent, &c.

If a contract of hiring and service be dissolved by mutual consent, a servant may recover wages *pro ratâ*. Such also is the case when he is dismissed without proper cause before the end of

(*x*) In *Laugher v. Pointer* (1826), 5 B. & C. 547, 555. The question has been raised under the Workmen's Compensation Act, 1906, whether "tips" form part of a waiter's "earnings": *Penn v. Spiers & Pond, Ltd.*, [1908] 1 K. B. 766.

(*y*) See as to perquisites known as "lambling money" and "Michaelmas money," Report of Labour Commission, 1893—94, vol. xxxv. p. 29.

(*z*) *Le Sage v. Coussmaker* (1794), 1 Esp. 187. (Assumpsit for work and labour by a stockbroker; defence that the services were gratuitous, and done solely with a view to a legacy: held by Lord Kenyon, that it was a question for the jury.) *Osborn v. Governors of Guy's Hospital* (1726), 2 Stra. 728. (Action for work and labour in transacting Mr. Guy's stock affairs. Raymond, C. J., directed the jury to decide what was the understanding between the parties; "a man who expects to be made amends by a legacy, cannot afterwards resort to his action.") *Baxter v. Gray* (1842), 3 M. & G. 771. (Action for work and labour by a surgeon against executors of a lady whom he had attended; no bill was sent in during the lady's life-

time, plaintiff being in hopes that she would leave him a legacy; jury gave plaintiff 250*l.* damages. Court refused to disturb the verdict. Tindal, C. J., observed: "The plaintiff probably hoped and expected to receive a legacy; but, this hope failing, I see no reason why he should not be held to be remitted to his legal right." "The ordinary presumption is that services are rendered in expectation of a remuneration, unless the contrary is proved:" *Coltman, J.*) *Shallcross v. Wright* (1850), 12 Beav. 558; *Dallinger v. St. Albyn* (1879), 41 L. T. (N. S.) 406; *Maddison v. Alderson* (1883), 8 A. C. 467.

(*a*) As to bequests in satisfaction of wages, see Roper on *Legacies*, 4th ed. 1026 and 1053; also *Chaney's Case* (1717), 1 P. W. 408. (A master being indebted to his man-servant for wages, 100*l.*, gave him a bond for the 100*l.*, as due for wages, and afterwards, by will, gave 500*l.* for long and faithful services. Lord Chancellor King held that this was not in satisfaction of the bond. The testator had by his will directed that all debts and legacies should be paid.)

the term (though he may also recover damages calculated with reference to the loss he has sustained); or, when a servant, without having actually done all which he agreed to do, has performed services which are of value, and by which his master has benefited (*b*).

Remuneration for Extra Work, or Overtime.

What is a day's work is to be ascertained by reference to the agreement, or to custom. Failing that, it is a question of what is reasonable in the circumstances. Of course, a servant must be allowed a reasonable time to eat and sleep (*c*).

Whether a servant must work on Sunday depends also on the nature of his employment and usage (*d*). A servant may recover remuneration for work done out of hours, or outside the scope of his regular employment (*e*). But in order to entitle him to recover, the services must clearly be not such as he is bound to perform under his contract of hiring and service; the services must be wholly different from these either in kind or amount. Otherwise an agreement for extra remuneration will be *nudum pactum*; there will be no consideration for it (a promise to do what one is bound to do forming no consideration), and it will not be enforced (*f*). *Harris v. Carter* (*g*) illustrates this principle. The

(*b*) See as to this, *Farnsworth v. Garrard* (1807), 1 Camp. 38; *Mumro v. Butt* (1858), 8 E. & B. 738; and the notes to *Cutter v. Powell*, Smith's L. C. vol. ii. 1.

(*c*) *Wilson v. Simson* (1844), 6 D. 1256; *Parsons' Law of Contract*, ii. 41; and see as to this, 5 Eliz. c. 4, ss. 12 and 13. *Fraser's Master and Servant*, p. 66. The length of working hours and the time for meals for women, young persons and children, have been regulated by legislation. See *Metalliferous Mines*, 1875, and *Coal Mines*, 1887, *Regulation Acts*; the *Factory and Workshop Act*, 1901; and see *Railway Regulation Act*, 1893.

(*d*) An apprentice to a barber is not bound to work on Sunday: *Phillips v. Innes* (1837), 4 Cl. & F. 234. See notes on 29 Car. II. c. 7, at p. 311; and see *Railway Regulation Act*, 1893, s. 1, sub-s. 1; and 6 & 7 Will. IV. c. 37, s. 14 (*Sunday work of bakers in City of London*).

(*e*) *Wood's Law of Master and Servant*, 172.

(*f*) See p. 92, *supra*.

(*g*) (1854), 3 E. & B. 559; *Bell v. Drummond* (1791), 1 Peake, 63. (Plain-

tiff acted as deputy to clerk of commissioners of land tax, at salary of 100*l*. New duties afterwards imposed upon the plaintiff: *held*:—that this raised no implication that servant was entitled to additional salary.) *Harris v. Watson* (1791), 1 Peake, 102. (No action will lie on a promise by a captain to a sailor of extra wages if he would perform extra work.) *Elsworth v. Woolmore* (1803), 5 Esp. 84. (Seamen cannot recover extra wages in virtue of any usage or custom.) *Stilk v. Myrick* (1809), 6 Esp. 129. (Promise by defendant, a captain, to divide among crew the wages of two men who had deserted: no action lay. "They had undertaken to do all they could under all the emergencies of the voyage": *Ellenborough, C. J.*) *Frazer v. Hutton* (1857), 2 C. B. (N. S.) 512. (Agreement by plaintiff to serve as steward for three years on board defendant's ship *Custos* at 3*l*. a month; stipulation that he should, if required, be transferred to any other ship in the same employment; during the three years, plaintiff was transferred to the ship *Dauntless*; by a second agreement the captain promised to pay plaintiff 4*l*. a month: *held*:—that there

plaintiff, a sailor, had signed articles for a voyage out and home at 3/ a month. Several of the crew deserted at the outward port, and the captain, to induce the plaintiff and others to stay, agreed to articles for the homeward voyage at 6/ a month. It was held by the Queen's Bench, that it was the duty of the plaintiff to perform the contract into which he had originally entered for the outward and homeward voyages, and that the subsequent promise was void for want of consideration.

Had the plaintiff been relieved from the obligation which he had contracted towards the shipowners, he might have entered into a fresh contract, and, under some circumstances, the captain might have had authority to bind the owners by entering into a fresh agreement on their behalf with him. Had there, for instance, been an entire change of the voyage, it might have been so. But here there were no circumstances of that kind. The voyage remained the same voyage for which the men had shipped; there was no consideration for a promise to the plaintiff; and the captain had no authority to bind the owners (*h*).

So, too, a promise to pay a pilot unusual remuneration for services which he was bound by statute to render to a ship would be held void (*i*). The question has generally arisen between owners of ships and seamen, when the latter, owing to desertion or other causes, have refused to proceed on a voyage unless they were paid extra remuneration. The Courts have always held that promises made in such circumstances are invalid. There is authority for saying that if payments are made by a captain under such a contract, they may be recovered by the owner (*k*). If, however, extraordinary services be required and rendered, if risk far in excess of what was contemplated have to be encountered, if the work to be performed be clearly additional to the servant's duties, a promise to pay extra wages will be enforced. The limitations of the principle stated in *Harris v. Carter*, will be understood by comparing it with *Hartley v. Ponsonby* (*l*). The crew of a ship was reduced from thirty-six (the number on board when she sailed

was no consideration for the second agreement.) *Carter v. Hall* (1818), 2 Sta. 361. (Plaintiff, purser's steward on board one of the king's ships, in receipt of a salary from the Crown: *held*:—that he could not recover extra remuneration from the defendant, the purser, though there was evidence that it was usual for the purser to pay 1*l*. for every gun by way of annual salary.) *The Araminta* (1854), 18 Jur. 793. (Master of a ship distributed the amount

of wages forfeited by deserters among those sailors who would manage the ship home: *held*:—that the owners were entitled to deduct the amount from the wages due.) *Money v. Haman* (1867), 5 S. L. R. 32.

(*h*) Per Lord Campbell, *l. c.*, p. 561.

(*i*) Maude & Pollock, 4th ed. p. 646; but see the *Jonge Andries* (1857), Swa. 226.

(*k*) *The Araminta*, see note (*g*).

(*l*) (1857), 26 L. J. Q. B. 322.

from Liverpool) to nineteen, only four or five of whom were able seamen. The captain entered into an agreement with certain of the seamen to pay them increased wages if they would continue to navigate the ship. The jury found that it was unreasonable for a vessel of 1,045 tons to proceed on that voyage with only nineteen hands. The agreement was held binding.

If there had been merely additional labour, and the voyage dangerous to life from this excess only, I should have thought that the new contract was not binding on the master any more than on the owners. But I think that we must take it, from the finding, that the plaintiff and the remaining crew were not bound under these articles to proceed on the voyage, and so were free men and at liberty to make a fresh bargain (*m*).

There is nothing to hinder a seaman recovering for salvage services, and any stipulation in an agreement by which he consents to abandon his right will be wholly inoperative (*n*).

Entire and Divisible Contracts of Service.

A contract of service may be entire and indivisible, that is, the consideration may be dependent on the entire fulfilment of the contract—the entire fulfilment of the promise given by one party being a condition precedent to the fulfilment of any part by the other (*o*). It may be severable or divisible, that is, the consideration may be susceptible of apportionment according as the contract is more or less carried out.

The terms of the contract may make it perfectly clear whether it is divisible or not. For example, a man may engage to do work at so much an hour or a day, or so much a foot, in which case he is free to leave off at any time and claim the value of the work which he has done; though even in such a case the servant may

(*m*) Per Lord Campbell, *l. c.*, p. 325. See also *The Providence* (1825), 1 Hag. Ad. 391. (Second mate succeeded to the office of chief mate during the voyage; no alteration in contract with reference to change of office; held entitled to rate of wages given to chief officers in similar voyages.) *Cutterbuck v. Coffin* (1842), 3 M. & G. 842. (Plaintiff engaged by commander of a brig of war to serve as cook, at the rate of 12*l.* a year beyond the rating of a seaman: action for wages: defence that there was no consideration; but held that the plaintiff could recover, this not being a case in which the plaintiff contracted to do work which he was already bound to

perform, but the case of a person perfectly free when he entered into the agreement.)

(*n*) 57 & 58 Viet. c. 60, ss. 156, 212. *The Florence* (1852), 16 Jnr. 572. (Ship abandoned at sea; subsequently recovered by her crew: held:—that crew were entitled to be rewarded as salvors.) See also the same view taken in *The Frede* (1861), 30 L. J. P. 269; and *Hanson v. Royden* (1867), L. R. 3 C. P. 47. (Captain died during voyage; first mate took his place and appointed A., an able seaman, second mate; held:—that A. could recover second mate's wages.)

(*o*) See *Cutter v. Powell* and the notes thereon in Smith's L. C. vol. ii. p. 1.

have to wait for the expiry of the period of service stipulated for or for the moment at which the wages become payable before he can recover in an action against the master (*p*). If the contract, on the other hand, be that the one party shall do the whole of a certain amount of work, and that the other shall pay for the whole—if one promise a lump sum for a definite and complete thing—it is different. No one would say that a portrait-painter could sue for his labour upon an unfinished picture, or that a watch-maker employed to repair a watch could be entitled to recover before he had completed his work. He cannot sue for the whole remuneration, because he has not performed the whole work; he cannot recover on a *quantum meruit*, because the contract is entire. Thus, a workman who had agreed to repair and make perfect chandeliers for 10*l.*, was held not entitled to recover anything, though the jury found that he had done work to the value of 5*l.* (*q*). In *Cutter v. Powell* (*r*), the executrix of a sailor, who was hired as second mate for a voyage from Jamaica to Liverpool for thirty guineas, failed to recover a proportionate part of his wages in these circumstances: The sailor had died before the whole voyage was completed; the contract was held to be entire; the performance of the whole service was a condition precedent, and in the absence of proof of any usage to pay proportionate sums, his executrix could recover no part of the thirty guineas. So, too, sailors, who had agreed not to demand their wages or any part thereof, until they arrived at the port of discharge, were held to be incapable of recovering wages *pro ratâ* if their ship were lost, or the voyage from any cause were not brought to completion (*s*). An early case, which strikingly illustrates this doctrine, is *Throgmorton v. Countess of Plymouth* (*t*). The Earl of Plymouth had appointed a person, of whom the plaintiff was administrator, to collect rents at a salary of 100*l.* a year. He died after serving three-quarters of a year. The administrator sued the Earl's administratrix for remuneration *pro ratâ*. The Court held that nothing was due. The most frequent illustration of the doctrine occurs in the case of domestic servants hired for a definite time. If dismissed for misconduct, they forfeit all right to any wages which have not accrued due,

(*p*) *Button v. Thompson* (1869), 4 C. P. 330, 339; *Parkin v. South Helton Coal Co.* (1907), 23 Times L. R. 408.

(*q*) *Sinclair v. Bowles* (1829), 9 B. & C. 92. This case, however, partly turned on the form of the action.

(*r*) (1795), 6 T. R. 320; Smith's L. C. vol. ii. p. 1.

(*s*) Abbott on Shipping (Aspinall & Moore's ed.), 262 *et seq.*; see, however, *Chandler v. Grieves* (1792), 2 H. Bl. 606, n.

(*t*) (1686), 3 Mod. 153.

even for the time which they have served (*u*). This question is dealt with in *Appleby v. Myers* (*v*), where Lord Blackburn thus states the law:—

The plaintiffs having contracted to do an entire work for a specific sum, can recover nothing unless the work be done, or it can be shewn that it was the defendant's fault that the work was incomplete, or that there is something to justify the conclusion that the parties have entered into a fresh contract.

On the other hand, if a contract be not to do a specific work for a specific sum, or work for a definite term; if the work be in its nature apportionable, and no remuneration be fixed upon; if the parties obviously intended payment to keep pace with accrual of benefit; if there be no express contract or custom to complete work before any remuneration is paid; if something be done under a special contract which is not in strict accordance with it, but from which benefit has been derived; the performance of a part will entitle a workman to partial payment. A shipwright was employed to repair a ship; no sum for the total repairs was fixed; after having completed a portion of the work, he refused to go on till he was paid for what he had already done; it was held that he could recover on a *quantum meruit* (*x*).

The tendency seems to be in favour of construing contracts of work and labour as divisible contracts (*y*); the changes in the mode of paying wages, &c. tend to make work apportionable. In *Parkin v. South Hetton Coal Co.* (*z*), a putter in a mine was paid

(*u*) See p. 186. *Crocker v. Molymour* (1828), 3 C. & P. 470. (Plaintiff hired for a year and provided with a livery suit; wrongfully dismissed within the year: *Held*:—that he could not maintain trover, though he had a good cause of action for wrongful dismissal, whereby he was prevented becoming entitled to the livery at the end of the year.)

(*v*) (1867), 2 C. P. 651. See *O'Neil v. Armstrong*, [1895] 2 Q. B. 70 and 418. (Owing to an increase of risk for which the owners were responsible, a seaman left his ship during the voyage. *Held*, that he could recover the balance of his wages, which was payable on the completion of his voyage, and damages.) In *Caine v. Palace Steam Shipping Co.*, [1907] 1 K. B. 670; [1907] A. C. 386, seamen signed on for what the Court found was an ordinary commercial voyage. War had been declared between Japan and Russia. At Hong-Kong, the cargo being coal, which is contraband of war, they learned for the first time that they were to proceed to Sasebo, a Japanese

naval base. They refused to proceed except on certain terms, and were convicted and imprisoned at Hong-Kong under sect. 225 of the Merchant Shipping Act, 1894. The plaintiffs sued for their wages from the time of their trial up to the "final settlement" (sect. 131, Merchant Shipping Act, 1894) of their claims: *Held*:—they were entitled to recover.

(*x*) *Roberts v. Havelock* (1832), 3 B. & Ad. 404.

(*y*) See the observations of Montague Smith, J., in *Button v. Thompson* (1869), 4 C. P. 330, 342.

(*z*) (1907), 23 Times L. R. 408; affirmed by C. A. (1907), 24 Times L. R. 193. There was a finding of fact by the County Court judge that "the wages in respect of each shift became due as they were earned, *toties quoties* on the completion of successive shifts, although not payable till the end of the fortnight." See *Warburton v. Heyworth* (1880), 6 Q. B. D. 1; *Walsh v. Walley* (1874), L. R. 9 Q. B. 367, which was a case of a "weekly

by reference to the number of tubs drawn. The wages were ascertained daily, but were not paid till the end of the fortnight. After four days the plaintiff refused to work. *Held*: That he could recover at the end of the fortnight the wages for the four days which he had worked.

According to the maritime law, freight was the mother of wages, and if the former were not earned, neither were the latter (*a*). The Court of Admiralty, especially in Lord Stowell's time, sought to prevent the harsh consequences of this principle (*b*). In the exercise of an equitable jurisdiction, the Admiralty Court decided that when a voyage was described in the articles of agreement by reference to various ports of delivery, a proportionate claim for the payment of wages attached at each of them, and that all attempts to prevent this by special contracts were ineffectual and void (*c*). The Legislature has abolished the rule that wages are dependent on the earning of freight. The Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 157, provides:—

(1) The right to wages shall not depend on the earning of freight; and every seaman and apprentice who would be entitled to demand and recover any wages if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to demand and recover the same, notwithstanding that freight has not been earned; but in all cases of wreck or loss of the ship, proof that the seaman has not exerted himself to the utmost to save the ship, cargo and stores shall bar his claim to wages.

(2) Where a seaman or apprentice, who would, but for death, be entitled by virtue of this section to demand and recover any wages, dies before the wages are paid, they shall be paid and applied in manner provided by this Act with respect to the wages of a seaman who dies during a voyage.

By the maritime law, a sailor's wages could not be withheld or reduced because he was sick or had been disabled by an accident in the course of his duties (*d*). This is still so if a seaman remain

hiring," and where there were special rules as to forfeiture of wages due. See p. 186, n. (*g*), *infra*, and the cases collected in note (*l*) on sect. 11 of Employers and Workmen Act, 1875, on p. 619, in part ii.

(*a*) See *The Juliana* (1822), 2 Dod. 504; Macl. (4th ed.) 232.

(*b*) *The Neptune* (1824), 1 Hag. 227; and see cases cited in Lord Stowell's judgment in *The Juliana*, note (*a*).

(*c*) *The Juliana*, *ubi sup*.

(*d*) *Paul v. Eden*, Abbott on Shipping, 250 (Aspinall and Moore's ed.); *Chandler*

v. Grievs, see note (*s*), p. 120. The following are the chief cases on this subject:—*Hulle v. Heightman* (1802), 2 East, 145; *Appleby v. Dodds* (1807), 8 East, 300; *Countess of Harcourt* (1824), 1 Hag. 248; *The Minerva* (1825), 1 Hag. 347; *George Home* (1825), 1 Hag. 370; *Hillyard v. Mount* (1828), 3 C. & P. 93; *Sinclair v. Bowles* (1829), 9 B. & C. 92; *Prince Frederick* (1832), 2 Hag. 394; *Jesse v. Roy* (1831), 1 Cr. M. & R. 316; *Taylor v. Laird* (1856), 1 H. & N. 266; *Button v. Thompson* (1869), L. R. 4 C. P. 330.

on board, unless the sickness or accident be the result of his own default (*e*). If any temporary detention of a vessel by force—for example, by an embargo or capture followed by recapture—occurs, the seamen will be entitled, not only to their full wages, but also to wages for the period of detention (*f*).

Remuneration for Work Unskilfully Done.

For work which is executed unskilfully or improperly, or not in such a manner as was bargained for, a workman will be entitled to recover only the reasonable value, if any, of his services. The rule, as laid down in some early cases, was different. If the work were executed under a special contract, the employer, it was said, must pay the stipulated price and obtain compensation by resorting to a cross action. But since the decision of the King's Bench in *Basten v. Butter* (*g*), a more reasonable rule has been recognised. That was an action by a carpenter against a farmer who had employed him to roof a barn. Evidence was offered at *nisi prius*, with a view to show that the work was improperly done. The evidence was rejected. The Court of King's Bench set the verdict for the plaintiff aside on the ground that the evidence should have been admitted; and in the subsequent case of *Farnsworth v. Garrard* (*h*), Lord Ellenborough stated thus the correct rule:—

If there has been no beneficial service, there shall be no pay; but if some benefit has been derived, though not to the extent expected, this shall go to the amount of the plaintiff's demand, leaving the defendant to his action for negligence. The claim shall be co-extensive with the demand.

In illustration of this, *Monney penny v. Hartland* (*i*) may be mentioned. There it was held by Abbott, C. J., that a surveyor whose estimate of the cost of a bridge turned out to be incorrect to a considerable amount, owing to his not having examined the nature of the soil, could recover nothing. So in *Bracey v. Carter* (*k*),

(*e*) See 57 & 58 Vict. c. 60, s. 160.

(*f*) *Beale v. Thompson* (1804), 4 East, 546; *MacLachlan*, 235; *Maude & Pollock*, 4th ed. i. 223.

(*g*) (1806), 7 East, 479.

(*h*) (1807), 1 Camp. 38. (Action for work and labour done, and materials supplied, in rebuilding the front of a house, which, when finished, was in great danger of falling.)

(*i*) (1824), 1 C. & P. 352.

(*k*) (1840), 12 A. & E. 373. See also *Le Loir v. Bristow* (1815), 4 Camp. 134.

(Value of goods lost by a servant deducted from wages due; it being part of the agreement between plaintiff and defendant that the former should pay out of his wages for the value of goods which were intrusted to him, and which were lost by his negligence.) *Innes v. Blandell* (1820), 3 Sta. 6; *Chapel v. Hickes* (1833), 2 Cr. & M. 214; *Oleworth v. Pickford* (1840), 7 M. & W. 314; *Turner v. Diaper* (1841), 2 M. & G. 241; *Newton v. Forster* (1844), 12 M. & W. 772. It is submitted that in cases where

it was decided that a solicitor guilty of negligence, by reason of which all the previous steps taken in an action entrusted to him became useless, could obtain nothing for his labour.

In the Admiralty Court it is well understood that a seaman may wholly forfeit, by drunkenness or other misconduct, his right to wages. Desertion formerly always involved this result (*l*); but the Merchant Shipping Act has invested the Court with discretion as to this (*m*). It is said to have been laid down by Lord Stowell (*n*) that "any acts which will justify a master in discharging a seaman during the voyage will also deprive the seaman of his wages." This rule, however, is not followed, at all events in the case of ordinary seamen. Thus a common sailor will not, though a mate or other person in authority might, forfeit his wages for having been once drunk. To warrant this there must be habitual drunkenness or mutinous conduct, or gross disobedience, or conduct endangering the safety of the ship (*o*).

In *The Thomas Worthington* (*p*), Dr. Lushington thus indicates the principles on which the Court acts:—

Cases, indeed, may occur, even in this Court, where the misconduct may be of so gross a description that, independent of any actual loss sustained by the owners, the entire forfeiture of wages would ensue; as, for instance, if a master had attempted to commit barratry; or if throughout a voyage he had shown gross incapacity, or had been constantly drunk. In either of these cases, would this Court be justified in pronouncing for any part of his wages under the contract? Unquestionably not; and, if any such case came before me, I should not hesitate for a single moment in rejecting his claim *in toto*.

It is sometimes laid down that a master cannot set off, by way of defence, damage sustained in consequence of goods having been lost by a servant's negligence, unless there is an agreement to that effect (*q*). Now, however, by Order XIX. r. 3, R. S. C., it is provided:—

A defendant in an action may set off, or set up, by way of counterclaim against the claims of the plaintiff, any right or claim, whether such set-off

the original contract was to pay so much, subject to certain deductions, it would still be unnecessary to counterclaim.

(*l*) *The Pearl* (1804), 5 C. Rob. 224; Macl. on *Merchant Shipping*, 245.

(*m*) 57 & 58 Viet. c. 60, s. 225.

(*n*) *The Exeter* (1799), 2 C. Rob. 261. Dr. Lushington in *The Blake* (1839), 1 W. Rob. 73. No such expressions are found in the report of *The Exeter*, in 2 C. Rob. 261.

(*o*) *The Malta* (1828), 2 Hag. 158; *The Gondolier* (1835), 3 Hag. 190; *The Blake* (1839), 1 W. Rob. 73; Macl. 249.

(*p*) (1848), 3 W. Rob. 128, 133; Macl. 249.

(*q*) *Le Loir v. Bristow* (1815), 4 Camp. 134; but see *Sharp v. Hainsworth* (1862), 32 L. J. M. C. 33, where a set-off by the employer for bad work was permitted on an information under the 20 Geo. II. c. 19, s. 1.

or counterclaim sound in damages or not, and such set-off or counterclaim shall have the same effect as a statement of claim in a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the Court or a judge may, on the application of the plaintiff before trial, if in the opinion of the Court or judge such set-off or counterclaim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof.

Under the Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), s. 3, sub-s. 1, the County Court—

May adjust and set-off, the one against the other, all such claims on the part either of the employer or of the workman, arising out of or incidental to the relation between them, as the Court may find to be subsisting, whether such claims are liquidated or unliquidated, and are for wages, damages, or otherwise (*r*).

This is qualified by sect. 11, which provides that:—

In the case of a child, young person, or woman subject to the provisions of the Factory Act, any forfeiture on the ground of leaving work shall not be deducted from or set-off against a claim for wages or other sum due for work done before such absence or leaving work, except to the amount of the damage (if any) which the employer may have sustained by reason of such absence or leaving work (*s*).

Frequently, so-called “penalties” are, by the agreement between masters and workmen, to be paid by the latter for defective workmanship, spoilt material, &c. The Truck Acts impose certain limitations in this matter (*t*).

Wages and Salary, when and how Payable.

A master is responsible for the payment of wages, even though the servant has been hired by the bailiff or overseer (*u*). It is sometimes said that at Common Law wages are due and payable when they are earned, but in practice this point is governed by custom or the terms of the contract. In *Ridgway v. Hungerford Market Co.* (*r*), the Court thought that evidence of successive quarterly payments of the salary of a clerk was sufficient to show

(*r*) *Hindley v. Haslam* (1878), 3 Q. B. D. 481. See part ii. p. 612.

(*s*) *Warburton v. Heyworth* (1880), 6 Q. B. D. 1. See part ii. p. 619. See Hosiery Manufacture (Wages) Act, 1874, which prohibits stoppages from wages except for bad and disputed workmanship; and Factory and Workshop Act,

1901, s. 116, which requires particulars of work and wages to be given to piece-workers.

(*t*) See part ii. p. 350.

(*u*) *Nabonie v. Scott* (1815), Hume, Decisions, 353.

(*x*) (1835), 3 A. & E. 171.

that he was entitled to payment of his salary quarterly, although the minutes of his appointment in the company's books merely mentioned an annual salary, and did not mention the periods at which it was payable.

So far as seamen are concerned, the time of payment of wages is fixed by the Merchant Shipping Act (*y*). In the case of ships in the home trade, it is two days after the termination of the agreement, or at the time when the seaman is discharged, whichever first happens.

The Legislature has in various statutes imposed restrictions on the mode of paying wages. Thus, in the Truck Acts (*z*), it is enacted that contracts for the hire of artificers are to be paid in current coin and not in goods (*a*). So in the Coal Mines Regulation Act (*b*), and the Metalliferous Mines Regulation Act (*c*), it is enacted that wages shall not be paid at any public-house or beer-shop to persons employed in or about any mine to which the Acts apply (*d*); and by the Payment of Wages in Public-houses Prohibition Act, 1883 (*e*), these provisions are extended so as to include any "workman" as defined by sect. 2 of that Act.

The Truck Act, 1887 (*f*), makes illegal contracts imposing as a condition of employment any term as to the place at which, or the manner in which, or the person with whom any portion of the wages is to be expended.

(*y*) 57 & 58 Vict. c. 60, ss. 134, 135.

(*z*) 1 & 2 Will. IV. c. 37; 50 & 51 Vict. c. 46; 59 & 60 Vict. c. 44; see part ii. p. 331.

(*a*) See at p. 334, *infra*. There is a similar provision in the Hosiery Manufacture (Wages) Act, 1874 (37 & 38 Vict. c. 48); and see sect. 12 of the Stannaries Act, 1887.

(*b*) 50 & 51 Vict. c. 58, s. 11; see part ii. p. 386.

(*c*) 35 & 36 Vict. c. 77, s. 9; see part ii. p. 366.

(*d*) Wages may be recovered in the County Courts, or proceedings may be taken under the Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90, s. 4) (*vid.* p. 612, *infra*). As to recovery of wages of seamen, see 57 & 58 Vict. c. 60, ss. 164—167; 43 & 44 Vict. c. 16, s. 11; 31 & 32 Vict. c. 71, s. 3, sub-s. 2.

County Courts which have Admiralty jurisdiction may entertain claims for wages when amount claimed does not exceed 150*l.*; but see Merchant Shipping Act, 1894, s. 165. As to remedies of married women, see p. 66, *supra*. As to infants' remedies for wages, see R. S. C. Ord. XVI. r. 16 (infants to sue as plaintiffs by their next friends); County Court Rules, 1903 and 1904, Ord. III. r. 10; Ord. V. r. 16 (next friend to be responsible for costs); 51 & 52 Vict. c. 43, s. 96 (infant may sue for "any sum of money not greater than *one hundred* (3 Edw. VII. c. 42, s. 3) pounds which may be due to him for wages or piecework, or for work as a servant, in the same manner as if he were of full age").

(*e*) 46 & 47 Vict. c. 31.

(*f*) Sect. 6; see part ii. p. 345.

Effect of Bankruptcy and Winding-up on Wages and Salaries.

There was formerly considerable difference of opinion as to whether, under sect. 10 of the Judicature Act, 1875, the rules as to priority of debts in bankruptcy applied in the case of winding-up companies (*g*). But the point has now been settled by legislation. The Preferential Payments in Bankruptcy Act, 1888 (*h*), provides as follows:—

Sect. 1 (1). In the distribution of the property of a bankrupt and in the distribution of the assets of any company being wound up under the Companies Act, 1862, and the Acts amending the same, there shall be paid in priority to all other debts—

- (b) All wages or salary of any clerk or servant (*i*) in respect of services rendered to the bankrupt or the company during four months before the date of the receiving order (*k*), or, as the case may be, the commencement of the winding-up, not exceeding fifty pounds; and
- (c) All wages of any labourer or workman (*l*) not exceeding twenty-five pounds, whether payable for time or for piece-work, in respect of services rendered to the bankrupt or the company during two months before the date of the receiving order (*k*), or, as the case may be, the commencement of the winding-up:

Provided that when any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to the date of the receiving order, or, as the case may be, the commencement of the winding-up (*m*).

(2) The foregoing debts shall rank equally between themselves, and shall be paid in full, unless the property of the bankrupt is, or the assets of the company are, insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the costs

(*g*) See *Re Association of Land Financiers* (1881), 16 Ch. D. 373; *In re Williams* (1887), 36 Ch. D. 573, 582.

(*h*) 51 & 52 Vict. c. 62.

(*i*) A secretary to a company may be a "clerk or servant" within this section; but a secretary, who does not give his whole time to the service of the company, and discharges the general duties of his office by a clerk appointed and paid by himself, is not a "clerk or servant" within the section: *Cairney v. Back*, [1906] 2 K. B. 746. See the decisions on 6 Geo. IV. c. 10. s. 48; 5 & 6 Vict. c. 122, ss. 28, 29; 12 & 13 Vict. c. 106, ss. 168, 169, cited in

App. to this chapter.

(*k*) Means "interim receiving order," if there be such: *Ex parte Fox*, *In re Smith* (1886), 17 Q. B. D. 4.

(*l*) *Ex parte Allsop*, *Re Disney* (1875), 32 L. T. (N. S.) 433 (a decision on the same words in the Bankruptcy Act, 1869).

(*m*) Sect. 3, sub-sect. (18) of the Bankruptcy Act, 1890 (53 & 54 Vict. c. 17), enacts: "No composition or scheme shall be approved by the Court, which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt."

of administration or otherwise, the foregoing debts shall be discharged forthwith, so far as the property of the debtor, or the assets of the company, as the case may be, is or are sufficient to meet them.

(5) This section, so far as it relates to the property of a bankrupt, shall have effect as part of section forty of the Bankruptcy Act, 1883.

(6) This section shall apply in the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order.

By sect. 3 this Act applies only to bankruptcies and windings up commenced after December 31, 1888.

Sect. 6 repeals the Companies Act, 1883; sect. 46, sub-sect. (1) and (2) of the Bankruptcy Act, 1883, and the Bankruptcy (Agricultural Labourers' Wages) Act, 1886 (*u*).

It is provided by the Preferential Payments in Bankruptcy Amendment Act, 1897 (*o*), as follows:—

Sect. 2. In the winding-up of any company under the Companies Acts, 1862, and the Acts amending the same, the debts mentioned in sect. 1 of the Preferential Payments in Bankruptcy Act, 1888, shall, so far as the assets of the company available for the payment of general creditors may be insufficient to meet them, have priority over the claims of holders of debentures or debenture stock under any floating charge created by such company, and shall be paid accordingly out of any property comprised in or subject to such charge.

Sect. 3 gives a similar priority to these debts over any claim for principal or interest in respect of debentures or debenture stock, in case of a receiver having been appointed or possession having been taken on behalf of the debenture holders.

The making of a winding-up order by the Court, or the appointment of a manager and receiver, discharges the servants of the company (*p*); and that, though the liquidator may continue to employ them in analogous duties with a view to reconstruction (*q*). The circumstances may afford evidence of a new contract; but, to be acted on by the Courts, that evidence must be clear and satisfactory (*r*). But a resolution for the voluntary winding-up of a limited company does not operate as a notice of discharge to the servants of the company (*s*).

(*u*) Sect. 2 saves the priority given by the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 35, to the claim for society's money in the hands of a bankrupt officer: *Ex parte Edmonds, Re Atkins*, 51 L. J. Ch. 406; *Ex parte Swansea, &c.* (1879), 11 Ch. D. 768.

(*o*) 60 Vict. c. 19.

(*p*) *Chapman's Case* (1866), 1 Eq. 346; *Reid v. Explosives Co., Ltd.* (1887), 19 Q. B. D. 264 (the appointment of a manager and receiver).

(*q*) *MacDowall's Case* (1886), 32 Ch. D. 366.

(*r*) *Ex parte Schumann, Re Forster* (1887), L. R. 19 Ir. 240.

(*s*) *Midland Counties District Bank, Ltd. v. Attwood*, [1905] 1 Ch. 357. As to the effect in this respect of the dissolution of a partnership, or the death of a partner, see *Bruce v. Calder*, [1895] 2 Q. B. 253; *Phillips v. Alhambra Palace Co.*, [1901] 1 K. B. 59, and p. 206, *infra*.

Rule 106 of the Companies Winding-up Rules, 1890, permits, in cases where there are numerous claims for wages by employees, that the claims should be made through a foreman or other person on the employees' behalf.

By sect. 53 of the Bankruptcy Act, 1883 (*t*), it is enacted that:—

(1) Where a bankrupt is an officer of the army or navy, or an officer or clerk otherwise employed or engaged in the Civil Service of the Crown, the trustee shall receive for distribution amongst the creditors so much of the bankrupt's pay or salary as the Court, on the application of the trustee, with the consent of the chief officer of the department under which the pay or salary is enjoyed, may direct

(2) Where a bankrupt is in receipt of a salary (*u*) or income (*x*) other than aforesaid, or is entitled to any half-pay, or pension, or to any compensation granted by the Treasury, the Court, on the application of the trustee, shall from time to time make such order as it thinks just for the payment of the salary, income, half-pay, pension, or compensation, or of any part thereof, to the trustee to be applied by him in such manner as the Court may direct (*y*).

Sect. 83, sub-sect. 2, of the Act of 1883, excepts from property divisible among the creditors, "The tools (if any) of his (the bankrupt's) trade, and the necessary wearing apparel and bedding of himself, his wife, and children, to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds in the whole" (*z*).

Servants need not wait for payment till the trustee has examined the debtor as to his affairs (*a*).

If an employer becomes bankrupt before the expiry of the period fixed by the contract of service, the servant may prove for the full amount of salary that would have become due had the contract been performed (*b*).

See as to the preferential rights of a workman to money due as compensation for accident in an employer's bankruptcy, Workmen's Compensation Act, 1906, s. 5, sub-s. (3) (*bb*).

(*t*) 46 & 47 Vict. c. 52.

(*u*) Includes annual salary of a commercial traveller terminable at week's notice: *Ex parte Brindley, In re Brindley* (1887), 56 L. T. (N. S.) 498; (actor's salary) *Ex parte Shine, In re Shine*, [1892] 1 Q. B. 522; (but not a collier's wages) *Ex parte Lloyd, In re Jones*, [1891] 2 Q. B. 231.

(*x*) Does not include the earnings of a "bone-setter," dependent on his personal skill; *Ex parte Benwell, In re*

Hutton (1884), 14 Q. B. D. 301; and see *In re Rogers*, [1894] 1 Q. B. 425 (a dentist in partnership).

(*y*) See "contracts for assignment of salary" on p. 100, *supra*.

(*z*) And see sect. 122, sub-sect. (4) of the Act.

(*a*) *Ex parte Powis* (1873), 17 Eq. 130.

(*b*) *Yelland's Case* (1867), 4 Eq. 350; *Clark's Case* (1869), 7 Eq. 550.

(*bb*) See *infra*, pt. ii.

Attachment of Wages.

The Wages Attachment Abolition Act, 1870 (*c*), s. 1, enacts "that, after the passing of this Act, no order for the attachment of the wages of any servant, labourer, or workman shall be made by the judge of any Court of Record or inferior Court" (*d*).

A receiver cannot be appointed of the future earnings of the judgment debtor (*e*).

By sect. 163 of the Merchant Shipping Act, 1894, it is enacted:—

(1) As respects wages due or accruing to a seaman or apprentice to the sea service—(a) They shall not be subject to attachment or arrestment from any Court.

(d) A payment of wages to the seaman or apprentice shall be valid in law notwithstanding any previous sale or assignment of those wages or any attachment, incumbrance, or arrestment thereof.

Executors, Legacies, &c.

Notwithstanding some *dicta* to the contrary, servants do not seem entitled to any preference for their wages from executors (*f*). It was in effect laid down by Lord Hardwicke in *Richardson v. Greese* (*g*), that, contrary to the well-known rule of equity, legacies to servants were not to be taken to be in satisfaction of debts due to them for wages; but the true view appears to be, that while a legacy equal to or in excess of such a debt will be taken to be in satisfaction of it, the Court will infer a contrary intention from slight circumstances. Thus, a legacy bequeathed by an old lady to a servant was held by Lord Hardwicke to be not in satisfaction of wages due, because the legacy was made payable one month after the death of the testatrix (*h*).

(*c*) 33 & 34 Vict. c. 30.

(*d*) Salary payable quarterly, and not due until a future date, cannot be attached under Ord. XXIV. rr. 3 and 4, of County Court Rules (now Ord. XXVI. rr. 1 and 4 of County Court Rules, 1903): *Hall v. Pritchett* (1877), 3 Q. B. D. 215; *Ex parte Wicks* (1881), 17 Ch. D. 70; *Gordon v. Jennings* (1882), 9 Q. B. D. 45 (salary of 200l. a year of a secretary to a company not "wages" of a "servant" within the Act); *Marks v. Booth* (1891), 90 L. T. J. 302 (clerk's salary already due not protected by Act). See *Booth v. Trail* (1883), 12 Q. B. D. 8, where Stephen, J., expresses the opinion

that the Act only applies to inferior Courts of Record.

(*e*) *Holmes v. Mullage*, [1893] 1 Q. B. 551. And see as to assignment of a salary, *In re Mirams*, [1891] 1 Q. B. 594.

(*f*) Williams on Executors (9th ed.), 875, n. In the case of the distribution of an insolvent estate, the Bankruptcy Act, 1888, s. 1, sub-s. (6) applies.

(*g*) (1743), 3 Atk. 69.

(*h*) Cited in *Mathews v. Mathews* (1755), 2 Ves. Sen. at p. 636; Williams on Executors (9th ed.), 1163, 1164, n. (z); Roper on Legacies, 1053. And see *Chancey's Case* (1717), 1 P. Will. 408.

Recovery of Wages.

The Employers and Workmen Act, 1875 (*i*), contains provisions for the recovery of wages.

Infants sue as plaintiffs by their next friends (*k*); but the County Courts Act, 1888 (s. 96) specially provides that:—

It shall be lawful for any person under the age of twenty-one years to prosecute any action in the Court for any sum of money not greater than *one hundred* (3 Edw. VII. c. 42, s. 3) pounds which may be due to him for wages or piece-work, or for work as a servant, in the same manner as if he were of full age (*l*).

Where under sect. 86 of the County Courts Act, 1888, the leave of the judge or registrar is required for the issue of a default summons, such leave may be given in all cases except where the affidavit in support of the application (*m*) discloses “that the defendant is a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or any person engaged in manual labour,” in which case no leave shall be given (*n*); but no such leave is required, even in cases where the claim does not exceed 5*l.*, if the action be for the price, value or hire of goods sold and delivered, or let on hire to the defendant, to be used or dealt with in the way of his trade, profession, or calling (*o*).

By the Admiralty Court Act, 1861 (*p*), jurisdiction is given to the Admiralty Court to deal with masters’ and seamen’s claims for wages. Before the passing of the Act, the Admiralty had, in the case of a special contract, no jurisdiction. County Courts which have Admiralty jurisdiction may entertain claims for wages up to 150*l.* (*q*).

Sect. 164 of the Merchant Shipping Act, 1894, provides that a seaman or apprentice to the sea may sue for wages due to him up to 50*l.* before a court of summary jurisdiction. By sect. 165, no

(*i*) 38 & 39 Vict. c. 90, ss. 3, 4 and 5.
See part ii.

(*k*) R. S. C., Ord. XVI. r. 16; C. C. Rules, 1889, Ord. III. r. 10. See Ord. V. r. 16, as to costs.

(*l*) This power is specially saved by Ord. III. r. 10 and Ord. V. r. 16 (C. C. Rules, 1903 and 1904).

(*m*) See Form 10 B; *Gordon v. Evans*, [1894] 1 Q. B. 248.

(*n*) Ord. V. r. 15 (C. C. Rules, 1903 and 1904). And see, as to leave to enter a plaint under sect. 74 of the C. C. Act, 1888, in cases of *servants*, &c., C. C. Rules, 1903 and 1904, Ord. V. r. 13 (10), (11) and (12), and Form 8 B.

(*o*) County Courts Act, 1888, s. 86, sub-s. (6).

(*p*) 24 Vict. c. 10, s. 10.

(*q*) 31 & 32 Vict. c. 71, s. 3, sub-s. (2); *The Blessing* (1878), 3 P. D. 35.

seaman or apprentice to the sea may sue for wages not exceeding 50*l.* in the Superior Courts or County Courts sitting in Admiralty except in certain specified cases (*v*). “For practical purposes when the claim is under 50*l.*, the plaintiff has no proceedings *in rem* open to him or means of enforcing his maritime lien. On the other hand, as several claims for wages by different persons, members of the same crew, can be joined in one suit in Admiralty, in any important case the claim is sure to exceed 50*l.*; and above that amount and up to 150*l.*, the County Court, sitting in Admiralty, has jurisdiction (*s*).” The time at which wages vest was the point considered in *Button v. Thompson* (*t*). If the ship has been demised by the registered owner, the action *in personam* for wages will lie against the charterers (*u*).

Claims for wages are subject to the Statutes of Limitations, 21 James I. c. 16, and (as to seamen’s wages) to 4 & 5 Anne, c. 13, ss. 17, 18, and 19, and are barred after six years. In one case a steward, who had permitted his master to retain his salary from time to time in his hands, was allowed after his master’s death in an administration action to claim in account arrears of salary for twenty years (*v*). It is laid down in several cases, that if a servant has left his employer’s service a considerable time without making a claim for wages, payment of all wages will be presumed. Such a view was stated by Abbott, C. J. (*y*), Parke, B. (*z*), and Gaselee, J. (*a*); but the proposition does not appear to be one of law, but merely an inference of fact, almost irresistible in the case of servants who are wont to be paid weekly or at other short intervals.

(*v*) This conflicts with 24 Viet. c. 10, s. 10.

(*s*) Raikes & Kilburn’s *Admiralty Jurisdiction in County Courts* (1896 ed.), 31. See as to recovery of wages where seaman has been lost with ship, Merchant Shipping Act, 1894, s. 174; and as to seaman’s right of distress for wages, *ibid.*, s. 693.

(*t*) (1869), 4 C. P. 330, where they were held to have vested at the end of each month under an agreement in the ordinary form. See 57 & 58 Viet. c. 60, ss. 114 *et seq.* By sect. 383, in fishing-boat agreements wages accrue from day to day.

(*u*) *Meiklereid v. West* (1876), 1 Q. B. D. 428.

(*x*) *Re Hawkins* (1880), 28 W. R. 210. (It was the practice of a master and steward to allow the steward to retain his salary out of money in his hands;

in an action by executor of master, held that the steward might claim in account his salary for twenty years.) See also *Banner v. Berridge* (1881), 18 Ch. D. 254. *Rishton v. Grissell* (1870), L. R. 10 Eq. 393; 18 W. R. 821. (The plaintiff, defendant’s manager, was held not entitled, in absence of fraud, to interest on each overbalance from the year at which it was ascertained, but only from the time of demand.) *Pearse v. Green* (1819), 1 Jac. & W. 135; *Teed v. Beere* (1859), 24 L. J. Ch. 782.

(*y*) See *Sellen v. Norman* (1829), 4 C. & P. 81 *a*; *Lucas v. Nodisiliski* (1795), 1 Esp. 296. Interest not allowed on claims for work and labour: *Trelawney v. Thomas* (1789), 1 H. B. 303; *Milsom v. Howard* (1821), 9 Price, 131.

(*z*) *Gough v. Finden* (1851), 7 Ex. 50.

(*a*) *Sellen v. Norman* (1829), 4 C. & P. 80.

By the Apportionment Act, 1870 (*b*), salaries are made apportionable.

Insurance of Wages.

Insurance of seamen's wages is said to be invalid as being contrary to public policy (*c*). On the other hand, it was always permissible for a master to insure his wages (*d*).

Deductions from Wages.

This question is dealt with by several statutes (*e*).

(*b*) 33 & 34 Vict. c. 35, s. 2.

(*c*) *The Juliana* (1822), 2 Dod. 509;
The Neptune (1824), 1 Hag. 239.

(*d*) *King v. Glover* (1806), 2 B. & P. N. R. 206. Seamen were not allowed to insure their wages, chiefly because their wages depended on earning freight. This being no longer the case, is the rule in force?

(*e*) See Truck Acts (printed in pt. ii., *infra*), 1831, ss. 5, 23, 24; 1887, ss. 3, 5, 7, 8, 9, 13 (2); 1896, the whole Act;

Coal Mines Regulation Act, 1887, s. 12 (pt. ii., *infra*); Hosiery Manufacture (Wages) Act, 1871, whole Act (pt. ii., *infra*); Employers and Workmen Act, 1875, s. 11 (pt. ii., *infra*); and the notes thereon. See also Merchant Shipping Act, 1894, ss. 132, 133, 140, 158—161, 182, 183. See as to deductions from wages on the question of "earnings" under Sched. I. (1) (a) of the Workmen's Compensation Act, 1897 (now 1906), *Abram Coal Co., Ltd. v. Southern*, [1903] A. C. 306.

APPENDIX.

Bankruptcy and winding-up: (see p. 127, n. (*i*), *supra*).

SERVANT.

Ex parte Neal (1829), Mont. & Mac. 194. Traveller engaged at annual salary, within 6 Geo. IV. c. 16, s. 48.

Ex parte Gough (1833), 3 D. & C. 189. A clerk, though at the time he was engaged his master was not a trader within the meaning of the Bankruptcy Acts, if the petitioner was, in fact, at the time of the commission, clerk to such a trader.

Ex parte Humphreys (1833), 3 D. & C. 114. A general hiring of a clerk, with the reservation that the wages are to be paid weekly within 6 Geo. IV. c. 16, s. 48.

Ex parte Collyer (1834), 2 Mont. & A. 29. A manager of a cotton mill paid so much a year in weekly sums.

Ex parte Saunders (1836), 2 Mont. & A. 684. A clerk compelled to leave the bankrupt's service several months before the bankruptcy on account of his master's inability to pay salary, and his master having

NOT SERVANT.

Ex parte Grellier (1831), Mont. 264, reversing Mont. & Mac. 95. Under 6 Geo. IV. c. 16, s. 48. The workmen of a coach-maker who worked by the piece, and who got a specific sum for each job.

Ex parte Cranfoot (1831), Mont. 270. Weekly labourers, excavators, bricklayers.

Ex parte Skinner (1833), Mont. & Bli. 417. Guard of a coach at weekly wages not within 6 Geo. IV. c. 16, s. 48. See *Ex parte Collyer*, correcting the report of this case. The hiring need not be for a year, but must be of longer duration than a week.

Ex parte Bennett (1838), 3 Mont. & A. 669. A clerk who voluntarily leaves insolvent master not within 6 Geo. IV. c. 16, s. 48.

Ex parte Gie (1839), Mont. & C. 99. A clerk who has involuntarily quitted the bankrupt's service nine

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assigned all his estates and effects; entitled to six months' wages.

Ex parte Homborg (1842), 2 M. D. & D. 612. The mate of a vessel hired by master, who was part owner, within sect. 48 of 6 Geo. IV. c. 16.

Ex parte Harris (1845), 9 Jur. 497. Clerk entitled, though absent from business owing to ill health for three months before the bankruptcy.

Ex parte Hickin (1850), 3 De G. & S. 662. Petitioner entered service of bankrupt as book-keeper and cashier in 1844; continued as such until December, 1848, without coming to agreement as to salary. It was then agreed that the salary should be 250*l.* a year from 1844; the reason why no earlier arrangement was made being that the bankrupt led petitioner to believe that he should share in the profits of a certain patent.

Ex parte Oldham (1858), 32 L. T. 181. A clerk to a custom house agent, engaged his evenings in the bankrupt's services, held entitled to allowance under sect. 168 of 12 & 13 Vict. c. 106.—Commissioner Goulburn.

Ex parte Chipchase (1862), 7 L. T. (N. S.) 290. A city editor of a newspaper employed at a weekly salary; engagement terminable at month's notice.

Ex parte Allsop; re Disney (1875), 32 L. T. (N. S.) 433. Miner with workmen under him, for whose wages he alone is responsible, but himself under superior orders, is a "labourer or workman" within sect. 32, sub-s. (2) of Act of 1869.

Ex parte Holyoake; In re Field (1887), 35 W. R. 396. H. general manager of F.'s brickworks; exclusively in F.'s service and liable to discharge by F. at week's notice; H. took over F.'s workmen at the wages paid by F. and contracted to produce bricks at a piece-rate per 1,000 fixed by F.; F. could discharge and engage men working for H. and alter the rate per 1,000 bricks; held, H. a "workman" within sect. 40 of Bankruptcy Act, 1883.

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months previous to the fiat by reason of the approaching insolvency and the decreasing business of the bankrupt, the clerk in the meanwhile getting employment elsewhere, not within the Act.

Ex parte Ball (1853), 3 De G. M. & G. 155. "Drawers" who were paid by and attached to the colliers employed by the bankrupt, and who were in attendance on the colliers.

Ex parte Simmons (1858), 30 L. T. (O. S.) 311. A clerk paid by commission on the goods sold by him, and not at a fixed salary, not within sect. 168 of 12 & 13 Vict. c. 106.—Commissioner Fane.

Ex parte Butler (1857), 28 L. T. M. 375. A person who was employed, but not exclusively, as accountant at an annual salary of 120*l.*, and who was the petitioning creditor in respect of salary upon which the adjudication issued, not a servant within the section aforesaid.—Commissioner Goulburn.

Ex parte Harcourt (1858), 31 L. T. 188. A singer at a tavern not within the said section.—Commissioner Fane.

Ex parte Walter; re Heath (1873), L. R. 15 Eq. 412. A non-resident music-master and a drill-sergeant engaged to attend a school twice a week at a certain rate per hour or per lesson, not preferential creditors within sect. 32, sub-s. 2 of the Bankruptcy Act, 1869.

Cairney v. Back, [1906] 2 K. B. 746. See note (i) at p. 127, *supra*.

CHAPTER X.

DURATION OF THE CONTRACT AND NOTICE.

It is the duty of a master to retain his servant in his service for the time agreed upon.

In the absence of circumstances showing an intention or custom to the contrary, hiring will be presumed to be for a year (*a*), or, as the proposition is often expressed, general hiring or hiring, when no term is fixed, is presumed to be a yearly hiring, and cannot be terminated before the end of the year. This presumption, it has been said, was established in order to give master and servant the benefit of all the seasons (*b*). A more probable explanation of it is that it arose in consequence of the statutory enactment (5 Eliz. c. 4, sections 3 and 7, and other earlier statutes), long in force, that hirings should be by the year. The presumption is limited, according to some judges, to servants in husbandry (*c*); but the weight of authority shows that it is applicable to all kinds of servants (*d*). It exists whether a contract be in writing or not (*e*), and even if it be conditional (*f*).

This presumption is not irrebuttable (*g*), and it may be displaced by stipulations in the contract as to times of payment, or by other circumstances. Modern usage in most trades is opposed

(*a*) Coke, Litt. 42 b: "If a man retain a servant generally without expressing any time, the law shall construe it to be for one year, for that retainer is according to law." *Fawcett v. Cuth* (1834), 5 B. & Ad. 904 (hiring of a warehouseman, wages payable monthly); *Beeston v. Collyer* (1827), 4 Bing. 309 (hiring of a clerk at monthly wages); *Turner v. Robinson* (1833), 5 B. & Ad. 789; *Huttman v. Boulnois* (1826), 2 C. & P. 510; *Green v. Wright* (1876), 1 C. P. D. 591. In America a general hiring is regarded as *prima facie* a hiring at will: Wood, 272.

(*b*) Story on Contracts, s. 1290.

(*c*) *Huttman v. Boulnois*, see note (*a*). In many districts the hiring in agri-

culture is in fact still for the year. See on this subject *Report of Royal Commission on Labour*, 1893—94, vol. xxxv. pp. 77, 78, 105, 109, 135, 136.

(*d*) *Lilley v. Elwin* (1848), 11 Q. B. 742; *Turner v. Robinson*, see note (*a*); *Holcroft v. Barber* (1843), 1 C. & K. 4; *Baxter v. Nurse* (1844), 1 C. & K. 10.

(*e*) *Elderton v. Emmens* (1847—1853), 4 C. B. 479; 6 C. B. 160; 13 C. B. 495; 4 H. of L. 624.

(*f*) *R. v. Sandhurst* (1827), 7 B. & C. 557; *R. v. Byker* (1823), 2 B. & C. 114.

(*g*) See Tindal, C. J., in *Baxter v. Nurse*, see note (*d*), (hiring of editor of a new periodical), and Pollock, C. B., in *Fairman v. Oakford* (1860), 5 H. & N. 635.

to it. Workmen contract for an indefinite time, for piece work, or subject to a week's, day's, or hour's (*h*) notice. The tendency of the decisions is against this presumption. Further, many of the contracts of work and labour are not contracts of Master and Servant; they are for the completion of a specific piece of work. They end with the work. The presumption does not, of course, exist when there really is no hiring or agreement to retain. Thus, in *Bayley v. Rimmell* (*i*), the plaintiff served the defendant as assistant surgeon for nearly half a year without a specific contract of hiring; and had been paid various sums at no fixed periods. He fell ill and did not return to his employment. In an action by the plaintiff for remuneration, on behalf of the defendant it was contended that he could not recover anything, as the hiring was for a year. But the Court decided that the plaintiff might recover on a *quantum meruit* for the services which he had actually performed.

In practice the presumption is of little use. No precise rules on the subject can be laid down; each case must be considered by itself. The following considerations, however, may be useful as guides: (1.) The circumstance that payment of wages takes place weekly or monthly is strongly in favour of the view that a hiring is for a week or a month; if this circumstance stand by itself, it will be conclusive as to the duration of the contract (*k*).

(2.) This fact may be modified by others, as was pointed out in *Davis v. Marshall* (*l*). Yearly servants often stipulate for the payment of their wages at short intervals; and an arrangement to pay weekly or monthly may be merely for the convenience of a yearly servant (*m*).

(3.) The nature of the employment must also be taken into account. It makes a material difference in this point of view, whether the servant be a labourer or a secretary, an editor or a sub-editor or an accountant. It is improbable that persons of education holding highly paid offices would consent to very short terms of engagement.

(4.) Custom often governs the matter. Thus, in an action for wrongful dismissal of the editor of a periodical, evidence was

(*h*) As at the London Docks. See evidence before Select Committee on *Master and Servant*, 1866, as to substitution of "minute or day contracts" for a contract of twelve months, 1866, 449, p. 25.

(*i*) (1836), 1 M. & W. 506.

(*k*) *R. v. St. Andrew's* (1828), 8 B. & C. 679; *R. v. Newton* (1788), 2 T. R. 453, per Buller, J. So in *R. v. Dodderhill* (1814), 3 M. & S. 243.

(*l*) (1861), 4 L. T. (N. S.) 216.

(*m*) *Ley v. Electrical Working Co.* (1893), 9 Times L. R. 495.

given that it was the usage that editors, sub-editors, and reporters, and all who are regularly employed upon a newspaper, in supplying a particular department, are engaged for a year, unless there is an express agreement to the contrary (*n*).

(5.) Service for more than a year without an express contract of hiring, or under a contract. but for no definite period, will be evidence of a yearly hiring, even if the contract be conditional (*o*).

In an Irish case where the agreement was, "I agree to serve Major B. as steward from May 31st, 1858, for 80*l*. per annum, &c., three months' notice required on each side," it was held that the hiring was a yearly one, subject to be determined by either party by giving three months' notice before the end of the year (*p*). In *Down v. Pinto* (*q*), the defendants, who had established smelting works in Spain, offered to employ the plaintiff as foreman, on the following terms: "I should require you to enter into an engagement to remain with me for at least three years, at my option. Salary, 250*l*. per annum." The Court thought that there was a yearly hiring, and that "at my option" did not enable the plaintiff to terminate the agreement at any time. "These words mean that the defendants are to have the option of saying whether the service shall continue for one, two, or three years."

In *Brown v. Symons* (*r*), there was an agreement to employ the defendant as a commercial traveller at a yearly salary, which was payable quarterly; the agreement to "be binding between the parties for twelve months certain from the date hereof, and continue from time to time until three months' notice in writing be given by either party to determine the same." Transposing the words the Court read the agreement as if it ran thus: "This agreement to continue from time to time until three months' notice, &c., but to be binding between the said parties for twelve months certain." It was an agreement for twelve months certain and no more. In *Parker v. Ibbetson* (*s*), there was an agreement in writing to serve as agent or representative of a manufacturer of woollen and mohair cloths, at a salary of 150*l*. a year, and a proviso that if at the end of the year the plaintiff had done

(*n*) *Baxter v. Nurse*, see note (*d*); *Holcroft v. Barber* (1843), 1 C. & K. 4.

(*o*) *R. v. Lyth* (1773), 5 T. R. 327; *R. v. Pendleton* (1812), 15 East, 449; *R. v. Worfield* (1794), 5 T. R. 506; *R. v. Byker* (1823), 2 B. & C. 114. See Appendix at end of chapter.

(*p*) *Forgan v. Burke* (1861), 12 Ir. C. L. 495.

(*q*) (1854), 9 Ex. 327.

(*r*) (1860), 8 C. B. N. S. 208.

(*s*) (1858), 4 C. B. N. S. 346. On the other hand, see *Peter v. Staveley* (1866), 15 L. T. (N. S.) 275.

sufficient business the defendant would make up his salary to 180*l*. It was held that the contract was one of yearly hiring.

B., who was engaged as engineer to a canal company at a salary of 500*l*., was discharged three months before the end of the year. No evidence having been offered of any custom as to determining the contract before the end of the year, B. was held entitled to recover salary to the end of the year (*t*).

"Notice" signifies that period of time which must elapse between the announced intention to terminate and the actual termination of the contract. The disregard of such "notice" by the master makes him liable to an action in which the servant can recover as maximum damages, the wages for such period calculated at the contract rate. Sometimes the contract itself, or the regulations of the factory (*u*), mine, or workshop in which the workman is employed, provides for the length of notice necessary. In such cases no difficulty arises. If the contract is silent on the point, evidence of custom in the trade or profession will be admitted, and, if the custom be proved, the Courts will hold the contract to have been made with reference to it (*v*).

By a long and well established custom, it is settled that in the absence of any agreement to the contrary, the hiring of domestic and menial servants is for a year and subject to determination on a month's—*i.e.* a calendar month's—notice by either master or servant or on payment of a month's wages (*y*) by the employer. "In the case of domestic servants," said Littledale, J., in *Furcott v. Cash* (*z*), "the rule is well established that the contract may be determined by a month's notice or a month's wages." The month's wages are to be regarded as the maximum damages.

In *Moult v. Halliday* (*a*) the Court refused to take judicial notice of an alleged custom, by which the master or servant might determine a contract of domestic service at the end of the first calendar month by notice given at or before the expiration of the first fortnight of the engagement; though the Court thought that such a custom, if proved, was not unreasonable.

Who are "domestic" or "menial" servants has been the subject of a considerable number of actions which are referred to below (*b*).

(*t*) *Buckingham v. Surrey and Hants Canal Co.* (1882), 46 L. T. (N. S.) 885.

(*u*) *Warburton v. Heyworth* (1880), 6 Q. B. D. 1.

(*v*) *Parker v. Ibbetson* (1858), 4 C. B. (N. S.) 346.

(*y*) Excluding "board wages." Per

Hill, J., in *Gordon v. Potter* (1859), 1 F. & F. 644.

(*z*) See note (*a*), p. 135; so Parke, B., in *Turner v. Mason* (1845), 14 M. & W. 112.

(*a*) [1898] 1 Q. B. 125.

(*b*) MENIAL—*Nowlan v. Ablett* (1835),

The question is one of extreme difficulty, especially when the situation of the servant is of a novel kind. The cases cited below show that living in the master's house is not a decisive test. If the nature of the service bring a person into close and frequent contact with his master, where, to quote Erle, C. J., in *Nicoll v. Greaves* (c), "the service is of such a domestic nature as to require the servant to be frequently about his master's person, or as in the case of the gardener about his grounds," the servant is generally considered a domestic or menial servant. Having regard, however, to the common use of the word "menial," and also to the judgment of the Court in *Todd v. Kerrich* (d), only servants holding an inferior situation in a household would be regarded as menial servants.

No clear rule as to length of notice to be given to servants other than menial or domestic servants exists. The custom above stated does not apply to trade servants (e) or servants in husbandry (f), clerks (g), newspaper reporters (h), or governesses (i).

When both custom and the contract itself are silent as to length

2 C. M. & R. 54. (A head gardener with several under gardeners subject to his directions, and not living in the master's dwelling-house but on his grounds.) *Johnson v. Blenkinsop* (1841), 5 Jur. 870. (A servant hired to keep the gardens and pleasure-grounds in order, to assist in the stables, and to make himself generally useful.) *Nicoll v. Greaves* (1864), 17 C. B. N. S. 27. (A huntsman a menial servant, though hired for a year.) NOT MENIAL—*De Serisy v. O'Brien* (1736), Barnes, 375. (Ambassador's courier paid for each journey.) *Todd v. Kerrich* (1853), 8 Ex. 151. (A governess engaged at yearly salary.) As to etymology of "menial," see *Nourlan v. Ablett*, and Littré's Dictionary, under head of *Ménie*. In the rules of Robert Grosseteste, "mesnee," "meignee," "meyne." means household, household servants: *Glossarial Index*, p. 163. The question is discussed in *Pearce v. Lansdowne* (1893), 69 L. T. (N.S.) 317, where Collins, J., adopts the definition of "menial servants" given in Roberts and Wallace's *Employers Liability*, at p. 214, viz., "those persons whose main duty is to do actual bodily work as servants for the personal comfort, convenience or luxury of the master, his family and his guests, and who for this purpose become part of the master's residential or quasi-residential establishment"; adding:—"with regard to the

derivation of the word menial, whether or not it be Greek or Latin, &c., I prefer the view adopted by Johnson, and which has the authority of Lawson, J., in *Lowler v. Linden* (Tr. Rep. 10 C. L. 188), viz., that it is from the Saxon word *meiny* or *mesnie*, which signifies a household or family." See *Toms v. Hammond* (1734), Barnes, 370, where it is said: "A menial servant may be employed out of the house on household affairs, a domestic in or about the house only." And see some of the cases on legacies to servants at p. 8, *supra*.

(c) See note (b).

(d) See note (b).

(e) The head-note in *Grundon v. Master* (1885), 1 Times L. R. 205, is wrong. No custom of three months' notice to travellers engaged by the year is there proved; and the jury stopped the case.

(f) *Lilley v. Elwin* (1848), 11 Q. B. 742.

(g) *Beeston v. Collyer* (1827), 4 Bing. 309; *Huttman v. Boudnois* (1826), 2 C. & P. 510.

(h) *Williams v. Byrne* (1837), 7 A. & E. 177.

(i) *Todd v. Kerrich* (1853), 8 Ex. 151. It is well known that as to artisans in certain trades the customary notice varies from a day to a fortnight. Sometimes it is alleged that "when a warp is finished, a weaver can be stopped

of notice, it is for a jury to say what is reasonable in all the circumstances (*j*). In *Low v. Walter* (*k*), six months' notice was held to be reasonable in the case of a foreign correspondent; and in *Chamberlain v. Bennett* (*l*), the same was held of a newspaper sub-editor; and in *Fox-Bourne v. Vernon* (*m*), of a newspaper editor.

In *Green v. Wright* (*n*), the contract gave the defendants, who were owners of a ship, power to dismiss a master abroad without notice. The Court refused to hold that a like right existed when the master was in this country. "He was entitled to some, and that is, to reasonable notice."

The Courts have refused to follow the analogy of notices for the expiration of tenancies which must be given so as to terminate at the end of the current year. This was so in *Ryan v. Jenkinson* (*o*), where a schoolmaster was appointed "at the rate of 55*l.* per annum"; his appointment being terminable by three months' notice from either party.

Contracts of service with the Crown are (except in a few special cases) determinable at the pleasure of the Crown; and the Crown, upon grounds of public convenience, cannot bind itself to employ a servant for a fixed period. This principle applies equally to

straight off," or that "the engagement lasts from piece end to piece end," or "until completion of the job"; in certain other cases that no notice or only one of an hour is necessary. See Labour Commission, 1892, *Answers to Schedules of Questions*, Group C., 6795—ix. p. ix. (*j*) "If a servant is retained for a year he cannot depart out of his master's service without reasonable notice according to the statute": Y. B. 38 H. 6, p. 14. "Qui impleto tempore conductionis remansit in conductione, non solum reconduxisse videbitur, sed etiam pignora videntur durare obligata." Dig. lib. xix. tit. 2, s. 11.

(*k*) (1892), 8 Times L. R. 358.

(*l*) (1892), 8 Times L. R. 234.

(*m*) (1894), 10 Times L. R. 647, where Russell, C. J., points out that *Brennan v. Gilbert-Smith* (1894), 10 Times L. R. 617, does not lay it down that newspaper editors are entitled to twelve months' notice, because "in that case no notice was given, and the question of twelve months' notice only arose incidentally with a view to fixing the amount of damages." *Hiscox v. Bachelor* (1867), 15 L. T. (N. S.) 543 (advertising agent); *Foxall v. International Land Credit Co.*

(1867), 16 L. T. (N. S.) 637 (clerk). As to "notice" in the case of schoolmasters, see *Hayman v. Governors of Rugby School* (1874), L. R. 18 Eq. 28; *Wright v. Marquis of Zetland*, [1908] 1 K. B. 63. *Lera v. Electrical Wonder Co.* (1893), 9 Times L. R. 495 (manager of a company); *La re Illustrated News Corporation* (1906), 16 Times L. R. 157 (journalist).

(*n*) (1876), L. R. 1 C. P. D. 591.

(*o*) (1855), 25 L. J. Q. B. 11; *Kein v. Hart* (1868), 2 L. R. C. L. 138; 3 L. R. C. L. 388, which may be consulted as to what words constitute a notice. In *Beeton v. Collyer* (1827), 4 Bing. 309, the Court refused to say whether the rule as to notice in case of tenancies applied to the hire of servants or not; while in *Low v. Walter* (1892), 8 Times L. R. 358, Coleridge, C. J., denied that it did not apply. See further as to notice, *Fawcett v. Cash* (1834), 5 B. & Ad. 904; *Williams v. Byrne* (1837), 7 A. & E. 177 (newspaper reporter); *Broxham v. Wagstaffe* (1841), 5 Jur. 845 (chemist's assistant); *Turner v. Mason* (1845), 14 M. & W. 112; *Metzner v. Bolton* (1854), 9 Ex. 518 (commercial traveller).

military and civil servants (*p*). Nor will the agent of the Crown, who engaged the servant, be liable if the servant be dismissed before the expiration of the period fixed by the contract of service, either upon the contract or for breach of warranty of authority (*q*).

(*p*) *Dunn v. The Queen*, [1896] 1 Q. B. 116; *Skenton v. Smith*, [1895] A. C. 229; both cases petitions of right alleging wrongful dismissal, and claiming damages. In the latter case it was held that the prerogative extended to the government of a Crown Colony.

(*q*) *Dunn v. Macdonald*, [1897] 1 Q. B. 401; C. A., *ibid.* 555. Certain public bodies possess an express power of

dismissing their servants according to discretion, and without assigning misconduct: see *Hayes v. Governors of Richmond Lunatic Asylum* (1891), 28 L. R. Ir. 107 [decided upon 30 & 31 Vict. c. 118, s. 6]. In *Wright v. Marquis of Zetland*, [1908] 1 K. B. 63, the C. A. held that the scheme of the school gave the headmaster a power of dismissing assistant masters "at pleasure."

APPENDIX.

Yearly or not yearly hiring (p. 136).

YEARLY HIRING.

Rex v. Stockbridge (1773), Bur. S. C. 759. Postillion served for a year; nothing said as to wages; yearly hiring.

Rex v. Macclesfield (1789), 3 T. R. 76. Servant hired for eleven months at 10 guineas; at the expiration of the time told by his master "You may as well stay on an end in your place"; servant assented; second agreement a general hiring.

Rex v. Seaton (1784), Cald. 440. Wages payable weekly; promise to stay another year.

Rex v. Birdbrooke (1791), 4 T. R. 245. Labourer agrees to serve farmer "at 3s. per week the year round."

Rex v. Hampreston (1791), 5 T. R. 205. Serve at so much a week with liberty to part on a month's notice.

Rex v. Lyth (1793), 5 T. R. 327. A husbandman served for a year; strong evidence of hiring for a year.

Rex v. Long Whaddon (1793), 5 T. R. 447. Service with the same master for three years evidence of hiring for a year, though servant at first hired only for part of a year. See also *Rex v. Hales* (1794), 5 T. R. 668; *Rex v. Worfield* (1794), 5 T. R. 506.

NOT YEARLY HIRING.

Rex v. Dodham (1769), Bur. S. C. 653. Glazier hired at the wages of 6s. a week, summer and winter.

Rex v. Elzack (1785), 2 Bott, 203. Maidservant hired "at 1s. 4d. a week and board and lodging for so long as they should want"; weekly hiring.

Rex v. Newton Towny (1788), 2 T. R. 453. Ostler hired "at 4s. 6d. a week"; weekly hiring.

Rex v. Odham (1788), 2 T. R. 622. Service for a year at so much a week without fixing any time of service; no yearly hiring.

Rex v. St. Peters (1763), Bur. S. C. 513. Hiring at so much and to part on a week's notice, not a hiring for a year, though servant continued six years with her master.

Rex v. Puckchurch (1804), 5 East, 382. Servant hired himself in the first instance for eight weeks, and afterwards to the same master for less than a year at weekly wages; then entered into new agreement with same master at weekly wages, nothing said as to duration of service; weekly hiring.

Rex v. Mitcham (1810), 12 East, 351. Hiring at so much a week for as long time as master and servant could agree; a weekly hiring.

YEARLY HIRING.

Ree v. Pendleton (1812), 15 East, 449. Hiring for a year presumed from service for three years.

Ree v. Great Yarmouth (1816), 5 M. & S. 114. Hiring at weekly wages, either party to be free to part at a month's notice; held to be a yearly hiring, though the case stated that the servant let himself by the week.

Boston v. Collyer (1827), 1 Bing. 309. Defendant entered plaintiff's service as clerk in 1793; was paid quarterly in 1811; during last six years the salary was paid monthly.

Ree v. St. Martins (1828), 8 B. & C. 674. Yearly hiring of a boots and tap-boy inferred from service for three years and a quarter, and the fact that the master had retained him after the fortnight for which he had at first invited him to stay.

Ree v. St. Andrews (1828), 8 B. & C. 679. Hiring at 1*l.* a week with a month's notice or a month's wages; yearly hiring.

Stiff v. Cassell (1856), 2 Jur. N. S. 348. Contract by author to write tales for a weekly publication, "extending over the period of one year," to be paid 10*l.* a week for each number; matter to be supplied each week.

Turner v. Robinson (1833), 5 B. & Ad. 789. Foreman of silk manufacturers; wages to be "at the rate of 80*l.* a year"; yearly hiring.

Fawcett v. Cash (1834), 5 B. & Ad. 904. Plaintiff entered the service of defendant under the following agreement: "Plaintiff engages to pay defendant 12*l.* 10*s.* per month for the first year, and advance 10*l.* per annum until the salary is 180*l.*, from the 5th of March, 1832"; contract for at least a year.

Down v. Pinto (1854), 9 Ex. 327. See p. 137.

Parker v. Ibbetson (1858), 4 C. B. N. S. See p. 137.

Brown v. Symons (1860), 8 C. B. N. S. 208; 29 L. J. C. P. 251. See p. 137.

Davis v. Marshall (1861), 4 L. T. (N. S.) 216. Plaintiff, manager of a shop under an agreement by which he was to receive a salary of 30*l.* payable monthly; hiring for a year.

NOT YEARLY HIRING.

Ree v. Dodderhill (1814), 3 M. & S. 243. Servant hired to serve for weekly wages of 4*s.* and board and washing, except in the harvest month, when wages to be 10*s.* 6*d.*

Ree v. St. Mary (1815), 4 M. & S. 315. Hiring at so much a week and 2 guineas for harvest; not yearly hiring.

Ree v. Rolfeenden (1815), 1 M. & R. 691. Ostler hired at so much a week for the winter and so much for the summer; weekly hiring.

R. v. Woodhurst (1818), 1 R. & Ald. 325. Agreement to serve from Michaelmas to Michaelmas, and to make 70,000 bricks at a stipulated price.

Ree v. Christ's Parish (1824), 3 B. & C. 459. Boy entered service of farmer for meat and clothes as long as he had a mind to stop; hiring at will.

Ree v. Warminster (1826), 6 B. & C. 77. Hiring at 6*s.* a week for the winter and 9*s.* a week for summer, nothing being said as to duration of service.

Ree v. Ardington (1834), 1 A. & E. 260. A. hired a shepherd for a term less than a year ending Michaelmas, 1825; he served for a few days after Michaelmas under no new agreement; master asked him if he chose to go on with him; wages to be the same; A. continued in service until Lady Day, 1826; no yearly hiring.

Baxter v. Nurse (1843), 1 C. & K. 10; (1844), 6 M. & G. 938. Action by editor of "Polytechnic Review" for wrongful dismissal; evidence that by general usage editors, sub-editors, reporters, and other persons regularly employed on newspapers are employed for a year; jury found that the usage did not apply to the "Polytechnic Review," which was a new publication; application for new trial refused.

Holcroft v. Barber (1843), 1 C. & K. 4. Action for wrongfully dismissing an editor; evidence that any person permanently employed (not occasionally only), whether as editor, sub-editor, or reporter, to supply a particular department of a newspaper, is to be presumed to be hired for a year; the jury found for the defendant.

YEARLY HIRING.

Langton v. Carleton (1873), L. R. 9 Ex. 57. Agreement between plaintiffs and defendant; latter engaged at salary of 200*l.* a year payable fortnightly; the agreement between the parties to be for twelve months certain, after which time either party to be at liberty to terminate the agreement by giving the other a three months' notice; and after twelve months or before any notice shall have expired, plaintiffs may do so on payment to defendant of 50*l.*—Bramwell, B., and Pigott, B., held that it was an agreement to expire without notice at end of twelve months, and then to continue, if the parties so pleased, until terminated by three months' notice. Kelly, C. B., thought the contract contemplated a continuance of service beyond the three months.

Buckingham v. The Surrey and Hants Canal Co. (1882), 46 L. T. (N. S.) 885. Plaintiff appointed engineer to defendants at a salary of 500*l.* a year; dismissed at a three months' notice. A yearly hiring; plaintiff entitled to recover salary for the unexpired portion of the year.

NOT YEARLY HIRING.

Butterfield v. Marler (1851), 3 C. & K. 163. Plaintiff, commission agent, acting for defendants; proof that for more than a year he had rendered his accounts.

Blackwell v. Pennant (1852), 9 Hare, 551. Servant paid weekly wages though irregularly; not yearly hiring.

Fairman v. Oakford (1860), 5 H. & N. 635. Plaintiff, a clerk of ship broker, left defendant's service, receiving a month's wages instead of notice; subsequently entered the defendant's service at a yearly salary of 250*l.*; nothing expressly said as to notice or duration of service; plaintiff paid weekly. Judge left it to the jury to say whether there was a hiring for a year, telling them, according to the report in the *Law Journal*, that, except in the case of menial servants, there was no inflexible rule that a general hiring is for a year. The jury found no contract for a year, and the Court refused to say that there was misdirection, or that the verdict was against the weight of evidence.

Robertson v. Jenner (1867), 15 L. T. (N. S.) 511. Hiring at 2 guineas a week for a year is hiring by the week and not by the year.

Evans v. Roe (1872), L. R. 7 C. P. 138. Plaintiff entered service of defendants under a memorandum which, *inter alia*, said, "April 13th, 1871. I hereby agree to accept the situation as foreman, &c., on my receiving a salary of 2*l.* per week and house to live in from the 19th April, 1871." Weekly hiring, and no evidence of conversation at the time of signing with a view to show yearly contract intended, was admissible.

CHAPTER XI.

MASTER'S DUTY TO INDEMNIFY.

A MASTER is bound to indemnify his servant for all expenses incurred or loss sustained in obeying his lawful orders.

No express contract of indemnity is required; the law will presume from the relation of master and servant—as, in fact, from any other contract of agency—an obligation to hold the latter harmless from the consequences of obedience to the lawful orders of the former (*a*).

The first important exception to the rule is that a promise, expressed or implied, to indemnify a servant against the consequences of violation of a statute, or a felony or misdemeanour, or a manifest civil wrong, is of no effect. Thus, a promise to indemnify a printer against the consequences of publishing a libel (*b*), or to indemnify a police constable for suffering a prisoner to escape (*c*), or for an assault (*d*), would be void. In all such cases the principle that there is no contribution between the tort-feasors or wrong-doers applies.

Where, however, an act is not palpably illegal, and is done

(*a*) Story on *Agency*, s. 339; Wharton on *Agency*, s. 340; Dig. Lib. xvii. tit. 1, 27, § 4. Pothier (*Mandat*, Chap. IV., s. I., A. I.) says of "L'obligation de rembourser le mandataire": "Pour qu'il y ait lien à cette obligation, il faut 1^o que le mandataire ait déboursé quelque chose; 2^o qu'il l'ait déboursé *ex causa mandati*; 3^o qu'il l'ait déboursé sans faute, *inculpabiliter*."

(*b*) *Shackell v. Rosier* (1836), 2 Bing. N. C. 634. ("The plaintiff, at the request of the defendant, had published the libel; that is, had committed an indictable offence. What is that but saying that, in consideration that the plaintiff and defendant had combined to commit a breach of the law, the defen-

dant promised to save the plaintiff harmless?"—Tindal, C. J.) *Colburn v. Patmore* (1834), Cr. M. & R. 173. (Action by proprietor of a paper against an editor for publishing a libel, for which plaintiff was convicted and fined; the judges indicated their opinion that a proprietor could not recover against the editor the damages sustained by such conviction.)

(*c*) *Featherstone v. Hutchinson*, Cro. Eliz. 199.

(*d*) *Allen v. Rescous* (1676), 2 Lev. 174; *Battersey's Case* (20 James I.), Winch. 48, and *Farebrother v. Ansley* (1808), 1 Camp. 344; said by Story (*Agency*, 339) to be overruled.

honestly, in discharge of the directions of the master; where a servant does not know, and has no reasonable ground for believing, that that which he did was wrongful; where he had a right to suppose that the orders which he obeyed were lawfully given, the servant will be entitled to indemnity, even though his acts have injured others. His duty is, in general, to obey; it would be wholly unreasonable to deprive him of indemnity, where the orders are not on the face of them unlawful. The older authorities may not support this view, but many decisions, such as *Adamson v. Jarvis* (c), and *Humphrys v. Pratt* (f), show that a person who requests another to do an act not manifestly unlawful or tortious to the knowledge of that other (g), undertakes to indemnify him against all the consequences. This principle is not limited to the relations of principal and agent or master and servant (g). "The rule that wrong-doers cannot have redress or contribution against each other," says Best, C. J., in *Adamson v. Jarvis* (h), "is confined to cases where the person seeking redress must be presumed to have known that he was doing an unlawful act."

No distinction between *malum in se* and *malum prohibitum* exists in this point of view. A servant can no more recover indemnity for contravening a statute than committing a crime at Common Law; it is clear that a servant could not recover expenses incurred in smuggling goods in pursuance of the orders of his master, any more than he could recover the expenses of carrying out a conspiracy to effect a felony.

It has been said that "as to servants doing an act in obedience to the master's orders, knowing the act to be unlawful, the rule as to parties *in pari delicto* does not apply with that strictness that is given to it in cases where the party is not in any measure subject to the control of the other" (i). The authorities for this statement are *Smith v. Cuff* (k), *Atkinson v. Denby* (l), and the class of cases

(c) (1827), 4 Bing. 66. Plaintiff, an auctioneer, sold cattle which were not the property of the defendant, in whose possession they were, and who employed him; owner recovered judgment against the plaintiff for selling the cattle; *held*, that the plaintiff was entitled to be indemnified by the defendant. Best, C. J., stated the rule thus: "Every man who employs another to do an act which the employer appears to have a right to authorise him to do, undertakes to indemnify him for all such acts as would be lawful if the employer had the authority he pretends to have."

(f) (1831), 5 Bli. N. S. 154. Plaintiff, a sheriff, seized cattle under a *fi. fa.* given by defendant; owner recovered damages against plaintiff; *held*, the plaintiff was entitled to indemnity from the defendant. See *Power v. Hacy* (1871), 19 W. R. 916.

(g) *Dugdale v. Lovering* (1875), L. R. 10 C. P. 196; following *Betts v. Gibbins* (1831), 2 A. & E. 57, and *Toplis v. Grane* (1839), 5 Bing. N. C. 636.

(h) *l. c.* p. 73.

(i) Wood, *Master and Servant*, p. 397.

(k) (1817), 6 M. & S. 160.

(l) (1862), 7 II. & N. 934.

in which embarrassed debtors, who have paid sums of money to particular creditors, in order to procure their assent to compositions, have been allowed to recover what they have so paid. Particular expressions used by Ellenborough, C.J., and Cockburn, C.J., in these cases, are wide enough to warrant the statement which we have quoted. When servants execute illegal orders through fear of dismissal, there is, to quote the language of the former, "Oppression on the one side, and obedience on the other." No decision, however, has gone so far as to say that a servant is entitled to be indemnified for the consequences of obeying manifestly illegal orders through fear of losing his place.

No right to indemnity will exist in respect of losses or expenses caused by the servant's failure to comply with orders or by reason of his exceeding them.

A servant can, of course, claim indemnity only for the losses which are directly due to the execution of his employer's orders.

The general principle of the Civil Law was that the person who had *bonâ fide* incurred expenses or liability in carrying out the order of his employer, was entitled to indemnity: "Impendia mandati exequendi gratiâ facta, si bonâ fide facta sunt, restitui omnimodo debent. Nec ad rem pertinet quod is qui mandâset potuisset . . . minus impendere" (*m*). But, to be recoverable, the expenses must not be accidental, but a consequence of the mandate: "Non omnia quæ impensurus non fuit mandatori imputabit, veluti quod spoliatus sit a latronibus, aut naufragio res amiserit, vel languore suo suorumque adprehensus quædam erogaverit: *nam hæc magis casibus quam mandato imputari oportet*" (*n*). Probably English law is the same.

(*m*) Dig. lib. xvii. tit. 1, sect. 27, 4.

(*n*) Dig. lib. xvii. tit. 1, sect. 26, 6.

CHAPTER XII.

MASTER'S DUTY TO PROVIDE SUSTENANCE.

It is the duty of a master to provide his (domestic) servants with wholesome and sufficient food and suitable lodging; and failure to do so is a good ground for departure.

We read in Fitzherbert that the "keeping from the servant meat or drink is a good cause for his departure from his service" (*a*). At Common Law a master is not bound to furnish medical aid or medicine to his servant (*b*). He is not even liable upon an implied contract or otherwise if a doctor or surgeon be called in to attend a servant who is injured in the course of his employment. But slight evidence of assent—for example, interference on the part of the master, or the fact that he called in his own doctor—will suffice to fix him with liability (*c*), and he will not be entitled to deduct the charge from the servant's wages. The position of an apprentice is different; in sickness he is entitled, at all events if he reside with his master, to proper medical attendance and medicine (*d*).

Failure or neglect to provide nourishment to a servant or apprentice was in certain cases at Common Law an indictable offence. Thus in *R. v. Gould* (*e*), a master to whom a poor boy was put out as apprentice was indicted for refusing to provide for him. In *R. v. Friend* (*f*), a girl of thirteen or fourteen had been apprenticed to the prisoner. He and his wife were

(*a*) 168 E. Apparently a servant, if maltreated, can leave the service and sue for damages; see Erskine by Rankine (18th ed.), 302.

(*b*) *Newby v. Wiltshire* (1785), 4 Doug. 284; *Atkins v. Bonwell* (1802), 2 East, 505; *Wemall v. Adney* (1802), 3 B. & P. 247. (Plaintiff's arm broken while driving defendant's team.) *Scarman v. Custell* (1795), 1 Esp. 270, is overruled.

In Scotland it would seem that a master may compel a male domestic servant to reside out of his house on paying board wages; not so a female domestic servant. *Graham v. Thomson* (1822), 1 S. 287.

(*c*) *Cooper v. Phillips* (1831), 4 C. & P. 581; *Sellen v. Norman* (1829), 4 C. & P. 80.

(*d*) *R. v. Smith* (1837), 8 C. & P. 153. A master was held bound, under a covenant in the indentures, to find "meat, drink, lodging and all other necessaries," to provide his apprentice with clothes and washing gratis: *Abbott v. Bates* (1875), 33 L. T. (N. S.) 491. See Austin on *Apprentices*, 77—79. As to duty to maintain apprentice during sickness or incapacity, see p. 181, n. (i), *infra*.

(*e*) (3 Anne), 1 Salk. 381.

(*f*) (1802), Russ. & Ry. 22; Stephen's *Digest of Criminal Law* (5th ed.), 220.

indicted for having refused and neglected to supply sufficient meat, drink, wearing apparel, bedding, &c. At a meeting of all the judges, except Kenyon, C. J., and Rooke, J., the opinion was expressed (Chambre, J. dissenting) that it was "an indictable offence, as a misdemeanour, to refuse or neglect to provide sufficient food, bedding, &c., to any infant of tender years, unable to provide for and take care of itself (whether such infant were child, apprentice, or servant), whom a man was obliged by duty or contract to provide for, so as thereby to injure its health." In the subsequent case of *R. v. Ridley (g)*, Mr. Justice Lawrence confined the liability to the case of children of tender years and under the dominion of the defendant. The defects of the law having been revealed in the case of the Sloanes in 1851, the 14 & 15 Vict. c. 11 was passed.

The whole of this Act, with the exception of sects. 3, 4, 5, 8 and 9, was repealed by 24 & 25 Vict. c. 95. Under sect. 3 a register is to be kept of young persons under the age of sixteen hired or taken as servants from any workhouse. Under sect. 4 such young persons hired from workhouses or bound out as pauper apprentices are to be visited periodically by the relieving officer.

The 24 & 25 Vict. c. 100, s. 26 (Offences Against the Person Act, 1861), provides:—

Whosoever, being legally liable, either as a master or mistress, to provide for any apprentice or servant necessary food, clothing, or lodging, shall wilfully and without lawful excuse refuse or neglect to provide the same, or shall unlawfully and maliciously do or cause to be done any bodily harm to any such apprentice or servant, so that the life of such apprentice or servant shall be endangered, or the health of such apprentice or servant shall have been or shall be likely to be permanently injured, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

Sect. 6 of the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), makes it an offence punishable on summary conviction wilfully and without lawful excuse to refuse or neglect to provide, when one is legally liable to do so, a servant or apprentice with necessary food, clothing, medical aid, or lodging (*h*).

(*g*) (1811), 2 Camp. 650.

(*h*) See also 4 Edw. VII. c. 15 (Prevention of Cruelty to Children Act, 1904). As to duties of owner to pro-

vide food, medicine, &c. to seamen, see 57 & 58 Vict. c. 60, ss. 198—210; and as to sailor suing owners for not supplying medicine, *Couch v. Steel* (1851), 3 E. & B. 402.

CHAPTER XIII.

MASTER'S DUTY TO TEACH APPRENTICE.

It is the duty of a master to teach, or cause to be taught, his apprentice the trade or profession to which he has been apprenticed.

This follows from the very nature of apprenticeship. It is, in fact, stipulated for in every indenture of apprenticeship, the usual covenant being "to take and receive the said apprentice as his apprentice during the said term; and to the best of his power, knowledge, and ability, teach or instruct, or cause to be taught or instructed," &c., &c. No technical meaning is given to "teaching": it may mean merely allowing the apprentice "the run of the office" or "shop" (*a*). Where two partners agreed to teach an apprentice his trade and one of them retired from the business, it was held that there was a breach of the agreement (*b*). It is a breach of a contract of apprenticeship for a master who has covenanted to teach three trades to cease to carry on one of them; and the apprentice may refuse to continue serving (*c*). In Scotland it has been held that if a master did not teach the apprentice his whole trade and mystery—for example, if a stonemason taught his apprentice only to hew stones—the contract might be annulled (*d*).

(*a*) *Cridland v. Marler and Bennett* (1893), 9 Times L. R. 529.

(*b*) *Couchman v. Sillar* (1870), 22 L. T. (N. S.) 480.

(*c*) *Ellen v. Topp* (1851), 6 Ex. 424; *Batty v. Monks* (1864), 12 L. T. (N. S.) 832.

(*d*) *James Carsewell*, 7th July (1794), unreported; cited in n. (*h*) at p. 604 of *Fraser's Law of Personal and Domestic Relations* (ed. 1846). See Campbell's edition of *Fraser's Master and Servant*,

p. 360, where reference is made to a curious case, *Gardner v. Smith*, in which an apprentice pleaded that his master had given up, in a great measure, his business as a joiner, and become a smuggler, and that he seldom attended the shop, and took no care to instruct the apprentice. The relevancy of this defence was not denied, but the Court thought it "not proved that the apprentice was deprived of daily instruction by reason of the casual absence of the master."

So in *Eaton v. Western* (*e*), the splitting up of their business by a firm who had covenanted to teach the apprentice the business "now carried on by them" was held a breach.

It is an answer to an action by the father against the master on the covenants of an indenture for not teaching, keeping, and maintaining that the apprentice absented himself, and thereby became incapacitated from serving as an apprentice (*f*); or that the apprentice was an habitual thief (*g*).

Where the teaching should be given, is either a question of construction or of what is reasonable in the circumstances. In *Royce v. Charlton* (*h*), the apprentice, son of Ann Charlton of Mansfield, in the county of Nottingham, put himself apprentice to defendant "of Mansfield in the said county of Nottingham," and the mother agreed to provide food, clothing, &c. The Court refused to imply an obligation to give instruction at Mansfield, the place where the master carried on business, and the parties to the indenture resided, at the time of its execution. This decision, however, was overruled, so far at least as outdoor apprentices are concerned, by the Court of Appeal in *Eaton v. Western* (*e*), which was an action for refusing to continue the plaintiff as apprentice against the defendants, who had removed their business to Derby from Lambeth, where it was carried on when the indenture was entered into. The defendants had required all their apprentices to go to Derby, and had offered to pay their railway fares and increase their wages. Drawing a distinction between an indoor apprentice, whom a master is bound to provide with food and board, and an outdoor apprentice, maintained by his father, the Court of Appeal thought the defendants' command to remove to Derby unlawful and unreasonable.

There is no discussion in the cases of the question whether there can be an apprenticeship to any but manual trades. There seems to be no reason against such a thing, even if "pupil" be the more appropriate designation.

No action will lie under ordinary articles of indenture against the personal representatives of the employer who has died, for not performing the covenants (*i*): the contract to teach is personal. It

(*e*) (1882), 9 Q. B. D. 636.

(*f*) *Hughes v. Humphreys* (1827), 6 B. & C. 680; *Raymond v. Minton* (1866), L. R. 1 Ex. 244; *Westwick v. Theodor* (1875), L. R. 10 Q. B. 224.

(*g*) *Leavoyd v. Brook*, [1891] 1 Q. B. 431 (pawnbroker's business).

(*h*) (1881), 8 Q. B. D. 1. As to sending an apprentice out of the country, see *Coventry v. Woodhull* (1616), Hob. 134.

(*i*) *Rex v. Peck*, 1 Salk. 66. It is otherwise with parish apprentices: *vid.* 32 Geo. III. c. 57, ss. 1—3.

is, of course, otherwise, where the contract expressly binds the executors and administrators (*k*).

If a master of an apprentice dies before the term for which he agreed to instruct him is ended the apprentice will not be able to recover the whole or any part of the premium on the ground of failure of consideration (*l*).

(*k*) *Cooper v. Simmons* (1852), 7 H. & N. 707.

(*l*) *Whincup v. Hughes* (1871), L. R. 6 C. P. 78; *Webb v. England* (1860), 29 Beav. 44; *Ferns v. Carr* (1885), 28 C. D. 409. But there may be an express stipulation for repayment: *Newton v. Rowse* (1687), 1 Vern. 460; and see

Derby v. Humber (1867), L. R. 2 C. P. 247 (death of the apprentice), where there was an express stipulation that a part of the premium or a fixed sum should be recovered in case of death; and see sect. 6, sub-sect. 2 of Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90).

CHAPTER XIV.

MASTER'S DUTY IN REGARD TO SERVANT'S CHARACTER.

A MASTER is not obliged to give his servant a character. Should a master, in giving a servant a character, state that which would be *prima facie* libellous or slanderous, no action, in the absence of express malice, will lie.

It matters not how much the servant is entitled to a character in fairness, and how cruel the refusal may be; it has not been disputed since the ruling of Kenyon, C. J., in 1800 in *Carrol v. Bird* (a) that a servant cannot sue his master because the latter does not give him a character.

The above immunity does not arise out of any peculiarity in the relation of master and servant (b). It is one of a large class of exceptions instituted in the interests of society. It is an application of a general principle, viz., that when a communication upon any subject-matter in which the party communicating has an interest, or in reference to which he has a duty, is made to a person having a corresponding interest or duty, the occasion is privileged. It lies upon the defendant to make this out to the satisfaction of the judge. When this is done, the burden of proof is shifted on to the plaintiff, who, in order to succeed, has to show express malice in the defendant (c). Only in connection with the

(a) 3 Esp. 201. See also *Hamley v. Moffatt* (1872), 7 Ir. R. C. L. 104. (The 2 Geo. I. c. 17, s. 4, required a master to give a certificate of discharge, and, in case of refusal, the servant might apply to a justice: *held*, that the statutory remedy was exclusive, and that no action for refusing certificate lay against the master.)

(b) Erle, J., in *Coshead v. Richards* (1846), 15 L. J. C. P. 278. The origin of the exemption may, however, have something to do with the testimonials

required by the 5 Eliz. c. 4, s. 10 (repealed by 38 & 39 Vict. c. 86, s. 17), to be given to servants.

(c) See Parke, B., in *Toogood v. Spyring* (1834), 1 C. M. & R. at p. 193, a dictum quoted with approval in many subsequent cases, including *Whitely v. Adams* (1863), 15 C. B. N. S. 392; *Harrison v. Bush* (1855), 5 E. & B. 344; *Spill v. Maule* (1869), L. R. 4 Ex. 232. See also *Jenouire v. Delmége*, [1891] A. C. 73.

issue of malice is the plaintiff's belief or impression as to the facts constituting the privilege relevant (*d*). The master's privilege is but an application of the general rule which shielded a person who wrote a letter to his mother-in-law containing defamatory statements respecting a person whom she was about to marry (*e*); a person who, a box having been stolen from his shop, went to the plaintiff's master and said, "There was no one else in the room, and he (*i.e.*, the plaintiff) must have taken it" (*f*); one who inserted a libel of the plaintiff in a correspondence with plaintiff's friend which was begun with the plaintiff's concurrence in order to investigate certain charges against him (*g*); directors who in a report to their shareholders stated with respect to their manager that there was a deficiency of stock for which he was responsible, and that his accounts had been badly kept and had been rendered to them very irregularly (*h*); a railway company, which, in a monthly circular to their servants, published the plaintiff's name, stating he was dismissed and giving the reason (*i*). This privilege has been extended on the ground of public policy to communications as to servants by their former employers. The best justification which can be offered for it is the interest which employers, who are responsible for the acts of their servants, have in obtaining information as to the antecedents and characters of those whom they take into their service (*k*). But for this protection no one who had much regard to his safety would think of giving an unfavourable character.

Communications with respect to a servant's character will be presumed to be *bonâ fide*, and a master will not be, in general, required to prove or substantiate the truth of such statements (*l*). In order to support an action against a master who has published matter *primâ facie* libellous respecting a servant, malice in fact,

(*d*) *Stuart v. Bell*, [1891] 2 Q. B. 341; *Hebditch v. McIlwaine*, [1894] 2 Q. B. 54; overruling *Tompson v. Dushwood* (1883), 11 Q. B. D. 43.

(*e*) *Todd v. Hawkins* (1837), 2 M. & Rob. 20. (Letter from a person to his mother-in-law charging the person whom she was about to marry with grave misconduct; letter voluntary.)

(*f*) *Anann v. Damm* (1860), 8 C. B. N. S. 597.

(*g*) *Hopwood v. Thorn* (1849), 8 C. B. 293.

(*h*) *Lawless v. Anglo-Egyptian Cotton Co.* (1869), L. R. 4 Q. B. 262.

(*i*) *Hunt v. Great Northern Rail. Co.*,

[1891] 2 Q. B. 189.

(*k*) See *Wightman, J.*, in *Gardner v. Slade* (1849), 13 Q. B. 796. See *Farquhar v. Neish* (1890), 17 R. 716, where a letter from a mistress to the registry office, where the servant had been engaged, was held privileged.

(*l*) *Alvanley, C. J.*, in *Rogers v. Clifton* (1803), 3 B. & P. 587; *Denman, C. J.*, in *Fountain v. Boodle* (1842), 3 Q. B. 5. A letter written in answer to inquiries about a servant is not privileged in the sense that it is protected from discovery, without the person who refuses to produce it pledging his oath that it will tend to criminate him: *Webb v. East* (1880), L. R. 5 Ex. D. 108.

that is, some wrongful act done intentionally, without just cause or excuse (*m*), must be proved; and the question will not be allowed to go to the jury unless there be evidence of malice (*n*). Its existence will not necessarily be shown by the fact that the statements complained of are not true; it is not the objective truth of the statements, but the honesty of the defendant's belief in them that is the point. Malice may be proved in so many ways that only instances can be given; for example, proof that the communications were false to the knowledge of the person making them (*o*); the heinous or intemperate character of the libel itself (*p*); the fact that statements were made under the influence of gross unreasoning prejudice (*q*), or were made unsolicited and officiously (*r*)—though that is not always conclusive—or that they were uttered needlessly in the presence of third parties (*s*), or with unreasonable publicity (*t*), may substantiate the existence of malice,

(*m*) Bayley, J.'s, definition of malice in *Bronage v. Prosser* (1825), 4 B. & C. at p. 255.

(*n*) There "must be something that is consistent only with a desire to injure the plaintiff, to justify a judge in leaving the question of malice to the jury." Jervis, C. J., in *Harris v. Thompson*, see note (*o*), citing *Somerville v. Hawkins* (1851), 10 C. B. 583. *Kelly v. Partington* (1833), 2 N. & M. 460, is sometimes quoted as an authority for the statement that "Slight evidence is sufficient in these cases to warrant the jury in finding malice." It is submitted that the same rule as to leaving questions to the jury applies to these as to other cases.

(*o*) *Fountain v. Boodle* (1842), 3 Q. B. 5. (Plaintiff employed as a governess for upwards of a year, during which time she was twice recommended to other situations by defendant; dismissed abruptly, without cause assigned; lost another situation, in consequence of the defendant writing in answer to inquiry, "I parted with her on account of her incompetency, and not being ladylike nor good-tempered." A post-script was added, "May I trouble you to tell her that this is the third time I have been referred to? I beg to decline any more applications." The judge directed the jury that the occasion was privileged; but some proof of illwill having been adduced, and there being no evidence to the contrary, he held that there was a question for the jury.) *Harris v. Thompson* (1853), 13 C. B. 333. (Defendant, director of two companies, &c.; plaintiff, an official in both; plaintiff dismissed from an office for misconduct;

defendant communicated the fact to the directors of the company, and, in reply to the inquiries, stated that one of the reasons was, obtaining money by false pretences: privileged communication.) *Farquhar v. Neish* (1890), 17 R. 716.

(*p*) *Rogers v. Clifton* (1803), 3 B. & P. 587. (Defendant quarrelled with plaintiff, his butler; called on his former master to inform him that plaintiff had behaved in an impertinent manner, and to desire him not to give him another character: being applied to by H., who wrote to him for a character, repeated the charges in a letter in strong terms: left to the jury to say, looking to all the circumstances, whether there was malice.)

(*q*) *Royal Aquarium Society v. Parkinson*, [1892] 1 Q. B. 431.

(*r*) *Pattison v. Jones* (1828), 8 B. & C. 578. (Master wrote first letter about a servant's misconduct, without having been applied to, and wrote a second in answer to inquiries: held that there was evidence of malice.) Bayley, J., pointed out that there might be occasions on which communications, though unsolicited, would be privileged. See also Coltman, J., in *Cozhead v. Richards* (1846), 2 C. B. p. 601; and the judgment of Lopes, L. J. (*dis.*), in *Stuart v. Bell*, [1891] 2 Q. B. 341, at p. 356. Lord Mansfield's ruling in *Lovry v. Akenhead*, Folkard's *Starkie*, p. 253, must be taken with reservation.

(*s*) *Taylor v. Hawkins* (1851), 16 Q. B. 308; *Manby v. Witt* (1856), 18 C. B. 544; *Twoood v. Spyrring* (1834), 1 C. M. & R. 181.

(*t*) *E.g.*, by telegram instead of letter: *Williamson v. Freer* (1874), 9 C. P. 393.

that is, a design to injure the servant. No enumeration of the circumstances which may prove this, and constitute extrinsic or intrinsic evidence of malice, is possible; the question of malice or *bona fides*, of proper or improper feeling, being peculiarly one for a jury. It is their business to say whether a master has made a letter about a servant a pretext for expressing private spite or conveying an ill-natured and unjust insinuation, or has described faults in an exaggerated fashion, indicating a wish to harm the servant.

In modern times the Courts have been disposed to give a liberal application to the rule stated above, and they have not confined privilege to cases in which communications are made to a person about to engage a servant. This is illustrated by *Weatherston v. Hawkins* (*u*). The defendant, in answer to an application made to him by R., to whom the plaintiff was recommended, gave the plaintiff a bad character. The brother-in-law of the plaintiff having repeatedly called on the defendant with reference to the subject, the defendant sent him a letter containing specific charges of fraud; it was held that this was a privileged communication as being incidental to the application for a character. This species of privilege, it is said, extends even to the communication of facts which were unknown to a master while a servant was in his employment; "the privilege lasts as long as anything is discovered before unknown to the master" (*x*). It will cover communications respecting the conduct of a servant after he has quitted a master's employment. When a master wrote in answer to inquiries "nothing can be in justice said in her favour," and that "she (defendant) has, since her dismissal, been credibly informed she (plaintiff) has been and now is a prostitute at Bury," it was held, in the absence of any evidence of the falsehood of the statement, that the letter was privileged (*y*).

A mutual insurance society for shipping may, in order to protect its interests, communicate to the owner of a vessel that if he gives the command to a certain person whom they believe guilty of

(*u*) (1786), 1 T. R. 110.

(*x*) See *Stuart v. Bell*, [1891] 2 Q. B. 341, where the communication was made to the master by his host at the end of a visit.

(*y*) *Child v. Affleck* (1829), 9 B. & C. 403; *Gardner v. Slade* (1849), 13 Q. B. 796. *Dixon v. Parsons* (1858), 1 F. & F. 24; (Letter to a person who has given

a good character to a servant which had procured a situation with defendant, saying that the servant does not deserve the character given; privileged.) *Somerville v. Hawkins* (1851), 10 C. B. 583; (Warning by master to servants not to associate with a dismissed servant, and statement of cause of dismissal; privileged.) *Hunt v. Great Northern Rail. Co.*, [1891] 2 Q. B. 189.

drunkenness, they will decline to continue to insure the vessel. Such a communication will be privileged (z).

The exact limits of the qualified privilege described in *Toogood v. Spyring* (a) are hard to define. Such expressions as "public and private duty," "matters where his interest is concerned," "the discharge of some duty, public, private or official, which the ordinary exigencies of society, his own private interest, or even that of another called upon him to perform" (b) are ambiguous. It cannot be said that they are yet clearly explained by the decisions. This much, however, is certain—by duties are not to be understood merely legal duties; they include moral and social duties of imperfect obligation; the duties, for example, which neighbours owe to each other, and which solicitors owe in vindication of the character of their clients (c). An action will lie against a person who makes a false and fraudulent statement with respect to the character of a servant (d); so, too, will an action lie, and substantial damages may be recovered for maliciously defacing a servant's written character by writing upon it a disparaging statement (e).

It is actionable, without proof of special damage, to say of a servant anything which prejudices him in the way of his business or profession; e.g., to say of a gamekeeper that he trapped three foxes (f); or of a servant girl that she had a miscarriage and had lost her place in consequence (g).

The uttering of a forged "character" or testimonial is an offence at common law. Thus when a person had forged and uttered a document purporting to be a testimonial by a clergyman, and recommending him for the situation of a schoolmaster, he was properly convicted of a misdemeanour at common law (h).

(z) *Hamon v. Falle* (1879), 4 A. C. 247.

(a) See note (s), p. 154.

(b) Folkard's edition of Starkie on Slander, 250. See further as to privilege in communications respecting servants, *Johnson v. Evans* (1800), 3 Esp. 32; *Cockayne v. Hodgkinson* (1833), 5 C. & P. 543; *Ramsay v. Webb* (1841), C. & M. 104; *Corhead v. Richards* (1846), 2 C. & B. 569; *Gilpin v. Fowler* (1854), 9 Ex. 615; *Fryer v. Kinnerley* (1863), 15 C. B. N. S. 422; *Cowles v. Potts* (1865), 34 L. J. Q. B. 248.

(c) *Harrison v. Bush* (1855), 5 E. & B. 344.

(d) *Wilkin v. Reid* (1854), 15 C. B. 192; *Foster v. Charles* (1830), 6 Bing. 396.

(e) *Wenthak v. Morgan* (1888), 20 Q. B. D. 635. The question was also

raised as to the person in whom the property in the character was; and Huddleston, B. (*l. c.* at p. 638), for this purpose, drew a distinction between "the letters ordinarily written in answer to an inquiry as to a servant's character—which would probably be the property of the master proposing to engage the servant—and a general testimonial of good character, which is, I should think, intended to be used as a voucher on future occasions."

(f) *Foutger v. Newcomb* (1867), L. R. 2 Ex. 327; *Seaman v. Bigg*, Cro. Car. 480; *Reginold's Case*, Cro. Car. 563.

(g) *Connors v. Justice* (1862), 13 Ir. C. L. R. 451; cf. *Lumley v. Allday* (1831), 1 C. & J. 301.

(h) *R. v. Sharman* (1854), Dears. 285. See 32 Geo. III. c. 56, at p. 328, *infra*.

CHAPTER XV.

MEASURE OF DAMAGES.

A SERVANT who is discharged improperly or without due notice is entitled to recover such damages as are compensation for the actual loss which he has sustained.

Sometimes the master and servant agree as to the terms on which they shall be at liberty to terminate the contract. If it be agreed, or, as in the case of menial servants, be implied in the agreement, that they may determine the engagement on a month's notice, the servant can recover only a month's wages, and no more, in the event of his being improperly discharged (*a*), the cause of action being the not giving the notice (*b*). A servant who is dismissed is bound to make reasonable exertion and show diligence in endeavouring to procure employment. It is deemed contrary to public policy that he should remain idle. He must seek for employment and accept it if it be offered. The true measure of damages is therefore not the amount of wages which he was promised under the agreement, but his probable loss. This will be his wages less the value of any suitable place which he has obtained (*c*), has been offered (*d*), or might have got by reasonable, not extraordinary, exertions (*e*). Willes, J., in *Hartland v. The General Exchange Bank* (*f*), told the jury that in estimating the damages due to the plaintiff—the manager of a banking company—

(*a*) *Hartley v. Harman* (1840), 11 A. & E. 798; *Gordon v. Potter* (1859), 1 F. & E. 644. But see *Maw v. Jones* (1890), 25 Q. B. D. 107, where dismissal with a week's notice being a term of the contract, it was held that the apprentice might recover more than a week's wages because of a defamatory statement made by the master when he dismissed him without any notice at all. See Chap. X., *supra*.

(*b*) *Fewings v. Tisdal* (1845), 1 Ex. 295.

(*c*) *Reid v. Explosives Co.* (1857), 19 Q. B. D. 264.

(*d*) *Brace v. Calder*, [1895] 2 Q. B. 253.

(*e*) See the remarks of A. L. Smith, L. J., in *Bowes v. Pease*, [1894] 1 Q. B. 202.

(*f*) (1866), 14 L. T. N. S. 863. See observations, *arguendo*, of Blackburn, J., in *Sowdon v. Mills* (1861), 30 L. J. Q. B. 176; *Emmens v. Elderton* (1853), 13 C. B. 508; *Speck v. Phillips* (1839), 5 M. & W. 283.

who had been engaged for a term of three years, and who had been dismissed at the end of four months, they should take his salary into account; that they were not to give him the whole of his salary for the three years; but that they were to take into account the probability of his obtaining other employment. The rule was thus expressed by Erle, J., in *Beckham v. Drake* (g):—

The measure of damages for the breach of promise now in question is obtained by considering what is the usual rate of wages for the employment here contracted for, and what time would be lost before a similar employment could be obtained. The law considers that employment in any ordinary branch of industry can be obtained by a person competent for the place, and that the usual rate of wages for such employment can be proved, and that when a promise for continuing employment is broken by the master, it is the duty of the servant to use diligence to find other employment.

Whence it follows that only nominal damages can be recovered, if the servant dismissed could have at once obtained similar employment (h).

The damages awarded must not be too remote. A seaman who had left his ship at Rio because he refused to take part in an illegal voyage, and who was committed to prison by the Brazilian Government as a deserter, was held entitled to recover loss of wages under his contract. But a claim for a loss of clothes, which had been carried away in the ship, was disallowed (i). In another case the facts were these: The plaintiff was engaged as manager of a mining company in South America for three years. The directors were at liberty to dissolve the agreement at any time on giving him twelve months' notice, or in lieu of such notice paying him twelve months' salary and his reasonable expenses in returning to England. If he served three years he was to be entitled to the expenses of the return of himself and his family. He was dismissed without notice or receiving a year's salary. The jury gave him a year's salary from the date of dismissal and his own expenses in returning to England. The Court refused to add to the damages the expenses incurred in the return of his family or the amount of his salary to the end of the third year (k).

(g) (1849), 2 H. L. C. 579, 606.
Smith v. Thompson (1849), 8 C. B. 44:
 (Clerk hired for two years; wrongfully
 dismissed after about one quarter's ser-
 vice; jury awarded one year's salary;
 Court refused to disturb the verdict).
Goodman v. Pocock (1850), 15 Q. B. 576;
Richardson v. Mellis (1824), 2 Bing. 229;
Walton v. Tucker (1880), 45 J. P. 23;
Maw v. Jones (1890), 25 Q. B. D. 107

(dismissal of apprentice).

(h) *Macdonnell v. Marston* (1884), 1 C. & E. 281.

(i) *Burton v. Pinkerton* (1867), 2 L. R. Ex. 340; *Ross v. Pender* (1874), 1 R. 352, where it is said that loss of gratuities is not to be considered in estimating damages.

(k) *French v. Brookes* (1830), 6 Bing. 354; *Noble v. Ames Manufacturing Co.*,

Though it is the duty of a servant who is discharged to seek employment, it appears that the *onus* rests with the person who denies his right to receive his wages in full to show that he could have obtained employment (*l*).

When it is said that a servant should diligently look for employment, it is not meant that a clerk should be ready to become a ploughman or a navy, or that a farm bailiff should be ready to undertake the work of a ploughman. This is illustrated by a Scotch case, *Ross v. Pender* (*m*). The plaintiff, who had been employed as head gamekeeper, was dismissed, but he was offered the same wages and the post of assistant gamekeeper. The Court held that he was not bound to accept the subordinate situation. "I think," said the Lord President, "it is sufficient for the disposal of the defence to show how the employment offered him if he would return was wholly different from his former one as head keeper."

A servant who is improperly dismissed, or whom the master refuses to take into his service, may at once sue for damages. He may also in the former case recover the value of services actually performed.

In other words, the servant may treat the contract as at an end and rescinded, and sue on a *quantum meruit* for his services, or he may treat the contract as still in existence and sue on a breach of it. In the notes to *Cutter v. Poorell* (*n*) another remedy is referred to, *viz.*, that "the servant may wait for the termination of the period for which he was hired, and may then sue for his whole wages, in *indebitatus assumpsit*, relying on the doctrine of constructive service." This phrase is borrowed from decisions in

112 Mass. 492. (Plaintiff, who had come from the Sandwich Islands to Massachusetts, could not recover in an action for refusal to receive him into service, damages for loss of time or expenses in journey.)

(*l*) *Costigan v. Mohawk Rail Road Co.*, 2 Denio, 699.

(*m*) (1874), 1 R. 352. See as to prospective remuneration in winding up of companies, *Yelland's Case* (1876), L. R. 4 Eq. 350; *Clark's Case* (1869), L. R. 7 Eq. 550; *Ex parte Machure* (1870),

L. R. 5 Ch. 737; *Ex parte Logan* (1870), L. R. 9 Eq. 149; *Dean and Gilbert's Case* (1872), 41 L. J. Ch. 476; *Shirreff's Case* (1872), L. R. 14 Eq. 417. The basis of calculation adopted is the present value of an annuity of a sum equal to the full salary for the unexpired term, having regard to ordinary health and life risks, and making a deduction for the liberty of obtaining fresh appointments.

(*n*) Smith's L. C. vol. ii, at p. 48, 11th ed.

settlement cases, and the doctrine was first suggested by Lord Ellenborough in the case of *Gandell v. Pontigny* (o), an action for wages for the whole quarter by a servant wrongfully discharged before the end of the quarter. Lord Ellenborough suggested that the plaintiff might be entitled to recover on the ground that as he was "willing to serve for residue in contemplation of law, he may be considered to have served the whole." But there is little doubt that since the decisions in *Smith v. Hayward* (p) and *Goodman v. Pocock* (q), *Gandell v. Pontigny* (o) cannot be upheld (r). No doubt a servant who has been improperly dismissed is not bound to sue at once; he may sue at the end of the term; but the sum which he will recover will be calculated not on the basis of fictitious service, but the actual damages which he has sustained. Now that it is sufficient for a plaintiff to state in his statement of claim the facts upon which he relies, these decisions are unimportant (s).

A servant who has been improperly dismissed need not wait until the expiration of the term for which he engaged to serve before bringing his action. So also if his master has refused without proper reason to receive him into his service, he may at once institute an action. This was decided in *Hochster v. De La Tour* (t), the facts of which were as follows: A courier was engaged in April of 1852 to go on a tour of three months, which were to commence on the 1st of June, 1852. On the 11th of May of that year the defendant wrote to say that he had changed his mind, and that he did not require the courier's services. He refused to make compensation. The courier began an action on the 22nd of May, 1852. The declaration averred that from the time of making the agreement until the time when the defendant refused to perform his promise and exonerated the plaintiff from performance, the plaintiff was ready and willing to perform the agreement. Breach that the defendant before the said 1st of June wrongfully refused to engage the plaintiff or perform his promise, and then wrongfully exonerated the plaintiff from the performance of the agreement, to the damage of the plaintiff. The plaintiff between the commencement of the action and the 1st of June obtained another engagement on equally good terms, but not beginning

(o) (1816), 4 Camp. 375.

(p) (1837), 7 A. & E. 544.

(q) (1850), 15 Q. B. 576.

(r) See notes on *Cutler v. Powell*, l. c., at p. 48.

(s) See *Barnsley v. Taylor* (1867), 32 J. P. 229, as to effect of obtaining

damages for improper dismissal.

(t) (1853), 2 E. & B. 678. See *Danube Rail. Co. v. Xenos* (1861), 11 C. B. N. S. 152 (carriage of goods); *Frost v. Knight* (1872), L. R. 7 Ex. 111 (promise to marry); *Johnstone v. Milling* (1886), 16 Q. B. D. 460 (covenant by lessor to rebuild).

until the 4th of July. On a motion in arrest of judgment, Lord Campbell said :—

The man who wrongfully renounces a contract into which he has deliberately entered cannot justly complain if he is immediately sued for a compensation in damages by the man whom he has injured; and it seems reasonable to allow an option to the injured party, either to sue immediately, or to wait till the time when the act was to be done, still holding it as prospectively binding for the exercise of this option, which may be advantageous to the innocent party, and cannot be prejudicial to the wrong-doer. An argument against the action before the 1st of June is urged from the difficulty of calculating the damages; but this argument is equally strong against an action before the 1st of September, when the three months would expire. In either case, the jury in assessing the damages would be justified in looking to all that had happened, or was likely to happen, to increase or mitigate the loss of the plaintiff down to the day of trial (*u*).

A master may recover damages for breach of contract of service by a servant, or for negligence in the performance of his duties (*x*), though, for obvious reasons, such actions are rare. It is usual to take proceedings under the Employers and Workmen Act, 1875, ss. 3 and 4 (*y*).

(*u*) In spite of a common opinion to the contrary, it does not appear to be the case that, in the absence of any stipulation on the subject, a servant is entitled to expenses incurred in going to his master's house before being engaged, or returning from it after being dismissed: *Burn's Justice* (5th ed.), 225; *Read v. Dunsmore* (1840), 9 C. & P. 588. But it is submitted that a domiciled Englishman's valet, for instance, who has been dismissed for miscon-

duct, while abroad, is entitled to the expenses of his journey home: his contract was made in contemplation of service in England. See p. 190, *infra*.

(*x*) See *Stumore, Weston & Co. v. Breen* (1886), 12 A. C. 698.

(*y*) *Clemson v. Hubbard* (1876), 1 Ex. D. 179; *Bores v. Press*, [1894] 1 Q. B. 202. And see as to penalties for certain breaches of contracts of service, Conspiracy and Protection of Property Act, 1875, ss. 4, 5: printed in Pt. II., *infra*.

CHAPTER XVI.

SPECIFIC PERFORMANCE.

A CONTRACT of hiring and service, work and labour, or apprenticeship, will not be specifically enforced.

The remedy of a master or servant claiming redress for the breach of such a contract is an action for damages.

In contracts of hiring and service the parties bargain for the personal qualities of each other. One servant is not as suitable as another; any more than one piece of land is as good as another; and at first blush it might seem that the reasons which have induced Courts of Equity to decree specific performance of contracts relating to land would equally apply to contracts relating to services. In point of fact, Courts of Equity did at one time act upon this view, and the books contain more than one instance in which masters were ordered to retain in their service persons whom they had improperly dismissed (*a*). This is, however, no longer done. Courts refuse to interfere in order to prevent a master discharging a servant; if improperly dismissed, the latter must seek his remedy in an action for breach of contract. It is thought inadvisable to force upon a master a servant whom he does not like, and with whom he must be brought into close proximity.

"We are asked to compel one person to employ against his will another as his confidential servant for duties with respect to the due performance of which the utmost confidence is required. Let him be one of the best and most competent persons that ever lived, still if the two do not agree, and good persons do not always agree, enormous mischief may be done" (*b*).

(*a*) *Ball v. Coggs* (1710), 1 Bro. Par. C. 140; *East India Co. v. Vincent* (1740), 2 Atk. 82. See Campbell's edition of Fraser's *Master and Servant*, 102.

(*b*) *Per Knight-Bruce, L. J.*, in *John-*

son v. Shrewsbury and Birmingham Rail. Co., see note (*c*); and Selborne, C., in *Wolverhampton & W. Rail. Co. v. London & N. W. Rail. Co.* (1873), L. R. 16 Eq. 433, 439.

Another reason against interfering, mentioned in the above case, is that there could be no "mutuality." A Court could compel a master to retain in his employment a certain servant: it could not compel the latter to perform faithfully his part of the contract, and to work diligently and skilfully (*c*). The difficulty of securing real performance of such a contract is too great. Hence, if the substance of an agreement be an agreement for personal service, even though it be connected with other matters, the Court will not decree specific performance (*d*).

What Courts have refused to do directly, they may by injunction effect indirectly. If a contract of service contains a positive agreement to do something and a negative agreement not to do another, they will restrain the breach of the negative agreement even though they are unable to enforce the affirmative. This is a comparatively new branch of Jurisprudence. For a time the Courts occasionally refused to interfere by injunction in aid of the negative part of an agreement when they could not enforce the positive part (*e*). Since the decision of Lord St. Leonards in *Lumley v. Wagner* (*f*), in 1852, they have acted differently.

(*e*) *Pickering v. Bishop of Ely* (1843), 2 Y. & C. C. C. 249. (A bill praying that the plaintiff might be quieted in the office of receiver-general to the defendant, and that the defendant might be restrained from preventing the plaintiff exercising the duties of the office; dismissed.) *Stocker v. Brockelbank* (1851), 3 Mac. & G. 250. (Plaintiff, manager of the business of the defendants, dismissed by them for negligence; reversing an order by Lord Cranworth, V.-C., Lord Chancellor Tnno refused to restrain the defendants from excluding plaintiff from the exercise of his duties as manager.) *Johnson v. Shrewsbury & Birmingham Rail. Co.* (1853), 3 De G. M. & G. 914. (Agreement that plaintiffs should run and work all the trains of the company, and provide foreman, mechanics, &c.; Lord Justices Knight Bruce and Turner refused to restrain the defendants from discharging plaintiffs.) *Webb v. England* (1860), 29 Beav. 44. (Apprentice dismissed by master; Master of the Rolls refused to cancel articles of apprenticeship, or to order a return of a portion of the premium.) *Chaplin v. London & North-Western Rail. Co.* (1862), 5 L. T. (N. S.) 601. (Agreement by which the plaintiffs should collect, and deliver goods at

certain stations of the defendants; Wood, V.-C., refused to restrain the defendants from terminating the arrangement.) *Ogden v. Fossick* (1863), 32 L. J. Ch. 73. (The Court refused to enforce an agreement whereby the defendant agreed to grant the plaintiff a lease of a certain wharf, and plaintiff agreed to employ defendant as manager of the wharf.) *Peto v. Brighton, Uckfield, &c. Rail. Co.* (1863), 32 L. J. Ch. 677. *Gillis v. McGhee* (1863), 13 Ir. Ch. 48. (Plaintiff engaged to take management of baths; no specific performance.) *Mair v. Himalaya Tea Co.* (1865), L. R. 1 Eq. 411.

(*d*) *Ogden v. Fossick*, see note (*e*); *White v. Boby* (1877), 37 L. T. (N. S.) 652. See remarks of Jessel, M. R., in *Rigby v. Connol* (1880), 14 Ch. D. 482, 487. See *Bainbridge v. Smith* (1889), 41 Ch. D. 462, per Cotton, L. J., at p. 474.

(*e*) *Kemble v. Kean* (1829), 6 Sim. 333; *Kimberley v. Jennings* (1836), 6 Sim. 340.

(*f*) 1 D. G. M. & G. 604; *Willis v. Child* (1851), 13 Beav. 117 (injunction restraining trustees of a grammar school from removing master); and *Daugars v. Rivaz* (1860), 29 L. J. Ch. 685 (injunc-

There the defendant, a singer, agreed to sing during a certain period at the plaintiff's theatre. She also engaged not to sing at any other theatre or any concert without the plaintiff's written authority. Lord St. Leonards held that, though unable to compel the defendant to perform her agreement, he could and ought to restrain her from singing elsewhere than at the plaintiff's theatre. But the Courts are averse to extending the decision in *Lumley v. Wagner* (g). The presence or absence of a negative covenant is only an illustration of the principle guiding the Courts in these cases, viz., that it is only in respect of a well-defined "specific thing upon which you can put your finger" (h) that an injunction will be granted. In *Whitwood Chemical Co. v. Hardman* (h) the defendant had agreed to give "the whole of his time" to the plaintiffs as manager. The Court of Appeal refused an injunction, Lindley, L. J., referring to the somewhat "anomalous" character of *Lumley v. Wagner* (at p. 428), and basing his judgment on the fact that, in the absence of a negative covenant, there was nothing to make that particular case an exception to the rule that contracts of service are not specifically enforced; while Kay, L. J. (at pp. 431, 432), deprecated any addition to the small number of cases where injunctions had been granted in the absence of negative covenants. One of them, indeed, *Montague v. Flockton* (i), is there disapproved. On the other hand, in *National Provincial Bank v. Marshall* (k), a clerk in the service of the plaintiffs had entered into a bond, subject to a condition to pay 1,000*l.* liquidated damages if at any time within two years he accepted employment in another bank: he resigned his post and within the two years

tion restraining the elders and deacons of a French Protestant church from hindering the plaintiff, the pastor of the church, in the exercise of his duties), are cases in which the power of dismissal was in question. Some of the cases relate to actors who played at one theatre when under an engagement to play at another; e.g., *Montague v. Flockton* (1873), L. R. 16 Eq. 189; *Webster v. Dillon* (1857), 3 Jur. (N. S.) 432; *Fechter v. Montgomery* (1863), 33 Beav. 22; *Grimston v. Cuninghame*, [1894] 1 Q. B. 125. See also *De Mattos v. Gibson* (1859), 4 D. G. & J. 276, and *Brett v. East India & London Shipping Co.* (1864), 2 H. & M. 404. (Agreement by which plaintiff was to be sole broker of defendants, and by which his name was to appear in all advertisements of company; the defendants had ceased to

employ the plaintiff as broker; Court refused to compel the defendants to issue advertisements with the plaintiff's name as broker when they could not be compelled to employ him as such.)

(g) See the remarks of Lindley and Kay, L. J.J., in *Whitwood Chemical Co. v. Hardman*, [1891] 2 Ch. 416; and of Romer, J., in *Ehrman v. Bartholomew*, [1898] 1 Ch. 671.

(h) Per Lindley, L. J., in *Whitwood Chemical Co. v. Hardman*, [1891] 2 Ch. 416 at p. 427, referring to Lord Selborne's judgment in *Wolverhampton & Walsall Rail. Co. v. London & N. W. Rail. Co.* (1873), L. R. 16 Eq. 433, at pp. 440, 441.

(i) (1873), L. R. 16 Eq. 189 (an actor's case).

(k) (1889), 60 L. T. (N. S.) 341.

took service with another bank. The Court thought there was an implied covenant not to serve, and restrained him by injunction.

The law cannot be said to be in a satisfactory state: every positive stipulation in a sense implies a negative (*l*). But, as has been said, the tendency of the Courts is to leave the plaintiff to his remedy in damages.

Courts will also interfere to restrain by injunction persons who have contracted not to practise professions or carry on trades or businesses within certain limits (*m*).

Under the Employers and Workmen Act, s. 6, a Court of Summary Jurisdiction "may make an order directing the apprentice to perform his duties under the apprenticeship" (*n*).

The Courts will not enforce the negative clauses in an apprenticeship deed against the apprentice by injunction (*o*).

(*l*) See the remarks of Fry, J., in *Donnell v. Bennett* (1883), 22 Ch. D. 835; and of Lord Blackburn, in *Doherty v. Allman* (1878), 3 A. C. 709, at p. 730.

(*m*) See Chapter VIII. pp. 101 *et seq.*,

supra; *Howard v. Woodward* (1865), 34 L. J. Ch. 46.

(*n*) 38 & 39 Vict. c. 90; as to seamen, see 57 & 58 Vict. c. 60, ss. 222—224.

(*o*) *De Francesco v. Barnard* (1889), 43 Ch. D. 165. See p. 62, note (*c*), *supra*.

CHAPTER XVII.

LIEN.

A WORKMAN has a lien upon all materials which have been delivered to him to be mended, repaired, or improved, or made up, and upon which he has expended labour or money.

Many systems of law give to workmen, artificers, &c. a lien for their wages on the buildings, &c. in which they have been engaged. English law recognises the following liens :

- (a) Special or possessory liens on materials, &c. in the possession of the workman ; a lien of which workmen who do work on materials in their own houses may avail themselves, but which does not extend to workmen in shops, factories, mills and premises of their employers ;
- (b) A general lien for a balance of account which is established by express contracts, or custom, and which is possessed by carriers, for example, or wharfingers (*a*) ;
- (c) Various maritime liens ; *e.g.*, of a crew for wages,—of a master for wages (*b*).

A special lien is created when labour has been expended upon any object. A shipwright repairs a ship put into his possession ; he has a lien for his remuneration (*c*). An article is delivered to a workman ; he expends no labour upon it ; he cannot set up a lien (*d*). It was for a time supposed that if the price of a work-

(a) As to proof of general lien, see *Rushforth v. Hadfield* (1806), 7 East, 224. As to lien of a purser for wages, see *Prince George* (1837), 3 Hag. 376. In the United States liens have been much extended beyond Common Law liens, by statutes. "The first attempt to create a mechanic's lien arose from a desire to improve as speedily as possible the city of Washington, as the seat of the permanent Government of the United States" : Phillips on *Mechanics'*

Liens, p. 11.

(b) 57 & 58 Viet. c. 60, s. 167 ; and for disbursements properly incurred, *ibid.*, sub-s. (2). See *The Sara* (1889), 14 A. C. 209, in consequence of which decision the law was altered ; *The Castle-gate*, [1893] A. C. 38.

(c) *Franklin v. Hosier* (1821), 4 B. & Ald. 341 ; *Ex parte Willoughby*, *In re Westlake* (1881), 16 Ch. D. 604.

(d) *Chapman v. Allen*, Cro. Car. I. 271 (no lien on cattle taken in to feed).

man's services were fixed, no right of lien existed (*e*). But since the case of *Chase v. Westmore* (*f*), the contrary doctrine has been recognised. An agreement to do work may be of such a character as to exclude a lien; but the mere circumstance that a particular price for work to be done is fixed is not conclusive (*g*). A lien may be excluded by the fact that credit is given (*h*).

The justification of this right is the fact that value has been imparted, or labour expended upon a certain article. It has been held that a livery-stable keeper has not a lien for the keep of a horse delivered to him in the way of his trade (*i*), and that an agister of cattle has no lien in the absence of an express agreement (*k*). On the other hand, a trainer, it is said, has a lien on a horse delivered to him to train; the horse has received additional value (*l*). Obviously such a distinction is in many cases difficult to apply. What, for instance, is the position of an analytical chemist, who has assayed ore, or a jeweller who has at the request of a customer ascertained the specific gravity of a jewel? Is it to be said that he has no lien unless what he has done has made the ore or the precious stone more valuable than it was? There are expressions in the authorities which seem to show that no lien would exist unless that were so. But it seems probable that the Courts would favour the existence of a lien wherever labour and skill had been bestowed, and that it would be sufficient for a workman to prove that he had done that which he was engaged to do.

A servant has no lien upon the property of his master which he as a servant has in his possession or custody.

(*e*) Whitaker on *Lien*, p. 47.

(*f*) (1816), 5 M. & S. 180. (Wheat sent in different parcels at different times to be ground; the price fixed upon for grinding, 15s. a load; the miller had a lien for the whole.)

(*g*) *Hutton v. Bragg* (1816), 7 Taunt. 14, 25.

(*h*) *Raitt v. Mitchell* (1815), 4 Camp. 146.

(*i*) *Judson v. Etheridge* (1833), 1 C. & M. 743.

(*k*) *Jackson v. Cammish* (1839), 5 M. & W. 342. See also *Steadman v. Hockley*

(1846), 15 M. & W. 553. (A conveyancer has no lien on a deed "with and in respect of" which he has done business for the owner, unless he has expended labour on the deed.) *Sanderson v. Bell* (1834), 2 C. & M. 304. (Auctioneer entrusted with mortgage deed in order to recover the debt due thereon; no lien.) As to solicitor's lien, see Cordery on Solicitors (3rd ed.), p. 354 *et seq.*

(*l*) *Jacobs v. Latour* (1828), 2 M. & P. 201; *Searfe v. Morgan* (1838), 4 M. & W. 270. (Mare sent to be covered by stallion belonging to the plaintiff; the plaintiff has a lien on the mare.)

This proposition is intended to give the effect of *R. v. Sankey* (*m*) and *Newington Board v. Eldridge* (*n*). In the former the town clerk of Ludlow claimed a lien on papers of the corporation on which he had worked as attorney or solicitor. His claim was sustained; but he had no right to retain muniments with respect to which he had done no work, and which he held as town clerk and as servant of the corporation.

In the latter case, a solicitor, who was clerk to a local board, sought to retain papers and books belonging to it. Bacon, V.-C., ordered him to deliver them up. But the Court of Appeal, thinking that the question of lien involved the very question to be tried in the action, varied the order, and directed the papers to be delivered only upon payment of the sum claimed by the plaintiff into Court.

If a workman is supplied with the raw materials by his master, and works them up upon the premises of the latter, he has no lien; he never had possession (*o*). For the same reason when a servant, as such, has any article belonging to his master in his possession, he has no lien. The servant's possession is in these cases his master's, and no lien attaches.

Lien is a personal right (*p*) and cannot be transferred (*q*); nor does it carry with it any right of sale (*r*).

It is intended to protect a workman's right to remuneration, and the actual expenses of a bailee cannot be included (*s*).

A lien may be lost by giving up possession of a chattel. For reasons which are not altogether satisfactory, it has been laid down that a person loses a lien if he claims a right to detain a chattel upon any other ground than that of the existence of a lien, or if he claims more than is actually due (*t*). It is submitted, however, that this view is not correct. The question is one of intention. In the words of Parke, B. (*u*), it is incumbent to show that the person

(*m*) (1836), 5 A. & E. 423.

(*n*) (1879), 12 Ch. D. 349.

(*o*) *Franklin v. Hosier* (1821), 4 B. & Ald. 341.

(*p*) Buller, J., in *Daubigny v. Duval* (1794), 5 T. R. 604. Story on *Bailments*, s. 440.

(*q*) Selwyn's *Nisi Prius*, 13th ed., p. 1320. No lien will be required by wrongfully obtaining possession: *Lempriere v. Pasley* (1788), 2 T. R. 435. (Goods delivered to a person wrongfully

claiming them; he may not detain them against owner until the latter repays freight, which the former has paid.)

(*r*) *Thames Ironworks Co. v. Patent Derrick Co.* (1860), 1 J. & H. 93.

(*s*) *Somes v. British Empire Shipping Co.* (1860), 8 H. L. C. 338.

(*t*) *Boardman v. Sill* (1809), 1 Camp. 410; *Knight v. Harrison* (1823), cited in *Searfe v. Morgan* (1838), 4 M. & W. at p. 279.

(*u*) *Searfe v. Morgan*, *l. c.* at p. 279.

entitled to the lien has agreed to waive it, or has agreed to waive the necessity of the tender of the less sum due.

A person can only give a lien upon deeds to the extent of his own interest (*x*).

A seaman has a lien for his wages on the ship upon which he has served. It extends to the whole of the ship, and not merely as a ship, but to every plank (*y*). It affects even a *bonâ fide* purchaser of the vessel without notice; and it takes priority over all other liens upon the ship (*z*); though the lien of a shipwright or other "material man" engaged on a ship takes precedence of the lien for wages earned subsequently (*a*); and in the case of a foreign ship the lien for damages for collision caused by the foreign ship's default takes precedence over the crew's lien for wages (*b*). A master's claim for wages and disbursements, whenever earned or made, takes priority over the claims of mortgagees (*c*). If the value of the ship is insufficient to pay the wages, seamen may require the freight to be paid into the Admiralty Court to meet the deficiency. Any agreement by which a seaman agrees to forego this lien is void (*d*).

There is no maritime lien for ordinary towage services rendered to a ship (*e*).

(*x*) *Turner v. Letts* (1855), 20 Beav. 185.

(*y*) *Neptune* (1824), 1 Hagg. 238; *Madonna d'Idra* (1811), 1 Dod. 37.

(*z*) *The Sydney Cove* (1815), 2 Dod. 13; *The Batavia* (1822), 2 Dod. 500; *The Margaret* (1862), 3 Hag. 238.

(*a*) *Immacolata Concezione* (1883), 9 P. D. 37; *The Gustaf* (1862), Lush. 506. See as to precedence of mortgagee's claim over claims for necessities, including wages paid at owner's request,

The Lyons (1887), 6 Asp. 199; and of mortgagee over "material men's" claim, *The Two Ellens* (1872), 8 Moore, P. C. (N. S.) 398.

(*b*) *The Elin* (1883), 8 P. D. 129.

(*c*) *The Hope* (1873), 1 Asp. 563; see this case as to masters' claims and bottomry bondholders, and *The Union* (1860), Lush. 128, as to seamen's liens for wages and bottomry bondholders.

(*d*) 57 & 58 Vict. c. 60, s. 156.

(*e*) *Westrup v. Great Yarmouth Steam Carrying Co.* (1889), 43 Ch. D. 241.

CHAPTER XVIII.

DUTIES OF SERVANTS.

SERVANTS are bound to obey the lawful orders of their masters, and they may be dismissed without notice for wilful disobedience of such orders (*a*).

The obedience which is required is not limitless. A servant is not bound to obey unlawful orders, for example, to commit a breach of the Factory Act. Neither is he obliged to risk his safety (*b*).

There may undoubtedly be cases justifying a wilful disobedience of such an order (*scil.* not to leave the house); as where the servant apprehends danger to her life, or violence to her person, from the master; or where, from an infectious disorder raging in the house, she must go out for the preservation of her life (*c*).

Servants may not be dismissed if they refuse to perform services of a kind which they did not undertake to perform. A lady's maid cannot be expected to milk cows (*d*), or a farm labourer to act as a domestic servant (*e*). A seaman, who is engaged for one

(*a*) As to the general principles stated in the text, see Lord Abinger in *Priestley v. Fowler* (1837), 3 M. & W. 1; *Turner v. Mason* (1845), 14 M. & W. 112; *Callo v. Browncker* (1831), 4 C. & P. 518.

(*b*) If a servant has been misled as to the dangers of his employment, he may throw up his engagement: Cockburn, C. J., in *Woodley v. Metropolitan District Rail. Co.* (1877), 2 Ex. D. 381, 388, and Lord Abinger in *Priestley v. Fowler* (1837), 3 M. & W. 1, 6; *Lindland v. Stephens* (1801), 3 Esp. 269. (If a master, by inhuman treatment, compels a sailor, for his safety, to quit the ship, this will not be desertion, and will not cause a forfeiture of wages. Accordingly it was not desertion within 7 & 8 Vict. c. 112, s. 9, when a seaman quitted a ship in consequence of the

cruel treatment by the master: *Edwards v. Trevellick* (1854), 4 E. & B. 59; or because the provisions were insufficient: *The Castilla* (1822, 1 Hag. 59.)

(*c*) *Per* Alderson, B., in *Turner v. Mason*, *l. c.*, at p. 117. In indentures of apprenticeship it is usual to covenant that the apprentice shall obey "all lawful" or "all lawful and reasonable orders."

(*d*) Bell's *Principles*, 77.

(*e*) See Campbell's edition of Fraser's *Master and Servant*, 78, where it is said: "Nor is a person hired to manage a farm bound to officiate as a servant of all work; nor can a gardener be forced to work in a turnip-field; nor a griever and overseer of a coalwork be compelled to assist at the windlass-wheel, and click the coals at the pit; nor a head

voyage, is not bound to serve for another voyage, the risks of which may be very different from those which he agreed to face. This is illustrated by *Barton v. Pinkerton (f)*, which has been already mentioned. The plaintiff had engaged to serve for twelve months as a mariner from London to various ports in North and South America, and to obey all lawful commands. War was declared between Spain and Peru, and a proclamation enjoining neutrality was issued by the English Government. Acting under the orders of the Peruvian Government, the captain told the crew at Rio that the next destination was Callao. The plaintiff objected to serve further, on the ground that the voyage was illegal, and he left the ship. It was held that an action for breach of contract lay against the owners, inasmuch as the vessel was used for purposes which made the crew liable to more risks than were incident to an ordinary commercial voyage. The general rule, however, is, as Baron Parke stated in *Turner v. Mason (g)*, that "the obligation of a domestic servant is to obey all lawful commands." It matters not how inconvenient to the servant, or how harsh or cruel the orders may be; they may be even unreasonable (*h*); provided they be lawful and within the scope of his employment, he must obey them on pain of dismissal. "The master is to be the judge," as Baron Parke observes in the same case, "of the circumstances under which the servant's services are required, subject to this, that he is to give only lawful commands." This principle was carried to an extreme length in *Turner v. Mason (g)*. A housemaid having insisted, contrary to her master's orders, upon visiting her sick and dying mother, was dismissed; and the Court of Exchequer

gamekeeper to act as under gamekeeper." See *Ross v. Pender* (1874), 1 R. (4th ser.) 352.

(f) L. R. 2 Ex. 340. The increase of risk must be due to the act or default of the employer or his agents to entitle the seaman in such a case to recover: *O'Neil v. Armstrong, Mitchell & Co.*, [1895] 2 Q. B. 418; *Austin Friars Steam Shipping Co. v. Strack*, [1905] 2 K. B. 315; *Sibery v. Connelly* (1905), 22 Times L. R. 175; *Palace, &c. v. Caine*, [1907] A. C. 386; and see the remarks of Lord Bramwell in *Smith v. Baker & Sons*, [1891] A. C. 325, at p. 346. Mr. Wood, in his *Law of Master and Servant*, pp. 175 and 183, contends that, in times of special or great emergency, a servant is not justified in refusing to work beyond the measure of a day's work as fixed by custom or contract.

No authority is adduced for this view, and it does not seem capable of being supported, except in so far as it is borne out by *R. v. St. John* (1829), 9 B. & C. 896.

(g) (1845), 14 M. & W. 112, 115. See *Spain v. Arnott* (1817), 2 Sta. 256; *Callo v. Brouncker* (1831), 4 C. & P. 518; and the following Scotch cases: *Hamilton v. McLean* (1821), 3 S. & D. 379; *A. v. B.* (1853), 16 D. 269; *Thomson v. Stewart* (1888), 15 R. 806. (Coachman, contrary to his mistress's orders, carried his own friends in her carriage; held, good ground of dismissal.)

(h) In *Boyle v. Great Western Rail. Co.* (1901), 17 Times L. R. 450, the test applied was the "reasonableness" of the order; but that may be accounted for by the terms of the railway company's rules there in question.

was of opinion that, even if the master had had notice of the cause of her request to absent herself, which was not alleged, it would not have justified her in disobeying her master's order. "There is not," said Baron Parke, "any imperative obligation on a daughter to visit her mother under such circumstances, although it may be unkind and uncharitable not to permit her."

In some cases appears a qualification of the doctrine just stated (*i*). The correct rule in point of law, however, seems to be that expressed by Baron Parke in *Turner v. Mason*, that wilful disobedience to any lawful order is a good cause of dismissal. At the same time it is probable that the Courts would enquire whether there had been substantial obedience, and whether the master had provoked the servant by subjecting him to annoyance. Dismissal for disobedience to lawful orders involves forfeiture of wages (*k*), and it would be a perversion of justice if a master, who had done his utmost to irritate a servant to whom wages were accruing, could take advantage of his own wrong and escape the obligation to pay anything by driving or successfully inciting a servant to an act of disobedience. According to Lord Fraser (*l*), "Any angry word spoken under provocation, or a disrespectful expression or action apologised for, will not be held sufficient to sanction a dissolution of the contract. *Dictum aut factum per iram aut furorem non est ratum, nisi quis in iisdem persistat*" (*m*).

(*i*) *Cussons v. Skinner* (1843), 11 M. & W. 161, where it was held to be necessary to prove disobedience, causing loss, turned on a point of pleading.

(*k*) *Spain v. Arnott* (1817), 2 Sta. 256.

(*l*) *Law of Master and Servant*, p. 405.

In a case, on appeal from the County Court, decided by Coleridge, C. J., and Manisty, J., Michaelmas Sittings, 1880, *Shield v. Legge*, the Court held that refusal to obey a lawful order to fetch books did not warrant dismissal when a master, by his language and conduct, had provoked a quarrel, and the servant had, in fact, obeyed shortly after it was over. Misconduct on the part of the servant may not go to the whole consideration of the contract: *e.g.*, in *Gould*

v. Webb (1855), 4 E. & B. 933. (Action for wrongful discharge: defence that the engagement was that the plaintiff, European correspondent of a newspaper, should, by every steamer, forward to New York a letter containing European news, and that defendant wrongfully neglected so to forward; and also that defendant employed plaintiff upon condition that he might draw bills for the amount of his salary as it became due, but not for any sum not due; but plaintiff wrongfully drew on defendant; both pleas held bad on demurrer. The case may be said to turn on pleading.) See remarks of Kekewich, J., in *Whitwood Chemical Co. v. Hardman*, [1891] 2 Ch. 416, at p. 419.

(*m*) The following are some of the chief decisions relating to obedience:—

GOOD GROUND FOR DISMISSAL.

Spain v. Arnott (1817), 2 Sta. 256. (Refusal by a farm servant to go with his team during usual dinner hour to a place a mile off till he had had dinner; but it is doubtful whether this case would be followed.) *Reid v. Dunsmore* (1840), 9 C. & P. 588. (A journeyman

NOT GOOD GROUND FOR DISMISSAL.

Callo v. Brouneker (1831), 4 C. & P. 518. (Defendant alleged that her servant, a courier, stopped at a particular hotel contrary to orders; appeared sulky when remonstrated with, and neglected to come several times when rung for. Park, J., in directing the

A servant is bound to be reasonably diligent and faithful in his service, and he may be dismissed for habitual neglect of his duties.

It is impossible to define the precise degree of fidelity which is required; it varies according to the nature of the employment. It is not every failure in faithful service, or every act of negligence which will warrant a master taking the extreme step of dismissing his servant (*n*). Sometimes it is said that it is the habit of neglecting a master's interests, which goes to the root of the contract, and warrants him in putting an end to it. In *Fillicul v. Armstrong* (*o*),

painter sent by his master to work at a gentleman's house, and ordered to keep to the walks: circumstance of his being found in one of the preserves a good ground for dismissal.) *Reano v. Bennett* (1842), 3 Q. B. 768. (Plaintiff, employed as a carpenter's mate on a South Sea voyage, to be paid, on the discharge and sale of the cargo, a proportion of the nett profits: when the captain died, and the mate, a foreigner, took command, plaintiff refused to work the ship except to an English port.) *Turner v. Mason*. See p. 171, *supra*. *Lilley v. Elwin* (1848), 11 Q. B. 742. (Plaintiff, a waggoner, refused to work during harvest until eight in the evening, because strong beer, of good quality, not supplied him according to an alleged custom, not established by evidence.) *Churchward v. Chambers* (1860), 2 F. & F. 229. (Messman of a regiment refused to send up dinner. The colonel having threatened to put him under arrest, he then served the dinner, which had been delayed half an hour: *held*, that mess committee were entitled to dismiss him, though next day he apologised.) *Beale v. Great Western Rail. Co.* (1901), 17 Times L. R. 450. (Platelayer, having worked during day, refused to proceed to night work without additional allowance for the hour of his own time taken in travelling to his work.)

(*n*) It is sometimes alleged that the command must be "just and reasonable": Gibbon on *Contracts*, p. 143; Wood, p. 223. But unless "reasonable" means only lawful, and within the scope of the servant's duties, the qualification seems not justified. See *Jacquot v. Bourra*, *n. (m)*, *supra*. "It is not every failure in faithful service which will warrant a master in discharging his servant, and, if he does, he must discharge him on the occasion

jury, said that "There was a contract for a year, with an implied agreement that if there was any moral misconduct, either pecuniary or otherwise, wilful disobedience or habitual neglect, the defendant should be at liberty to part with the plaintiff"; but he added, "no such conduct had been proved." *Jacquot v. Bourra* (1839), 7 Dow. 348. (Action for wrongful discharge of plaintiff and his wife: plea that the plaintiff's wife obstinately refused to work for the defendant; but on demurrer plea held bad, because not showing a disobedience of reasonable commands.) *Price v. Mouatt* (1861), 2 F. & F. 529; (1862), 11 C. B. N. S. 508. (Plaintiff, engaged as buyer: refused to obey an order to card lace, was dismissed: jury found that carding lace was not within the duties of buyer.)

of this misconduct, and not at any time after, at the master's option": *per* Bramwell, B., in *Horton v. McMurtry* (1860), 5 H. & N. 667, 675; *Edwards v. Levy* (1860), 2 F. & F. 94. See *Tomlinson v. Ashworth* (1885), 50 J. P. 164, where the question was of the workman "absenting himself," and so forfeiting wages; *Baxter v. London and County Printing Works* (1899), 15 Times L. R. 331.

(*o*) (1837), 7 A. & E. 557.

which was an action for wrongful dismissal brought by a French master, the defendant pleaded that the plaintiff had absented himself for four days without the defendant's consent. It was not shown that the defendant had suffered any inconvenience in carrying on his school; and it was therefore held that he was not justified in dissolving the contract. If a servant were frequently to absent himself without leave and to sleep out at night, he might be dismissed without notice (*p*). Even absence for a day or a single hour might, in certain circumstances, show such wanton disregard of his employer's interests as to excuse dismissal. An actor who failed to be present at a first night, a printer who quitted his work shortly before a newspaper went to press, might no doubt be at once dismissed (*pp*).

A master may, of course, recover from his servant damages which he has suffered by reason of the servant's negligence or misconduct or breach of contract. In *Stumore Weston & Co. v. Broom (q)*, the master of a ship was held liable to the owners for signing bills of lading which contained incorrect dates of the shipment of goods.

When a servant or workman receives materials to be dealt with in the course of his business, he is a bailee coming under the fifth of the six divisions described by Holt, C. J., in *Coggs v. Bernard (r)*. His duty is "to use ordinary diligence in the care and preservation of the property entrusted to him." A watchmaker, for example, with whom a watch is left is bound to use ordinary care in keeping it (*s*). So, where the servant of a merchant was entrusted in the absence of his master with his goods, and caused them to be landed before the customs duties were paid, and the goods were consequently forfeited to the Queen, it was held that an action on the case lay against the servant (*t*). "A watchmaker, having a watch left with him for repairs," says Story (*u*), "is obliged to use ordinary diligence in keeping it; and if he omits it, and the watch

(*p*) *Robinson v. Hindman* (1800), 3 Esp. 235.

(*pp*) See App. at p. 192, *infra*.

(*q*) (1886), 12 A. C. 698. In *Bowes v. Press*, [1894] 1 Q. B. 202, the Court of Appeal held that a refusal by miners, in obedience to a preconceived plan of action, to go down in a certain "cage" into the mine was an "absenting themselves" from work such as might make them liable to substantial damages. See *Countess of Salop v. Crompton* (1600), Cro. Eliz. 777. 784. (Trespass against shepherd, who killed sheep entrusted to

his charge.) *Hussey v. Pacy* (1666), 1 Lev. 188. (A servant who knowingly caused his master to break a certain covenant liable to action on the case.) *Savage v. Walther* (1796), 11 Mod. 135; Story on Agency, s. 310.

(*r*) (1703), Ld. Raym. 909; 1 Sm. L. C. 184 and 204 (11th ed.).

(*s*) *Clarkey v. Earnshaw* (1818), 1 Gow. 30.

(*t*) *Levison v. Kirk* (7 James I.), Lane, 65; *Hussey v. Pacy* (1666), 1 Lev. 188; *Walker v. The British Guarantee Association* (1852), 18 Q. B. 277.

(*u*) *Bailments*, sect. 429.

is lost, he is liable for the value in damages. So a workman is bound not only to guard the thing bailed against ordinary hazards, but also to exert himself to preserve it from any unexpected danger to which it may be exposed." The case generally cited in support of this doctrine is *Leck v. Maestaer* (*x*). The proprietor of a dry dock received a ship for the purpose of repairing it. The dock-gates were burst by an unusually high tide, and the ship was injured. Only one watchman was left to take care of the shipping. Lord Ellenborough ruled that it was the duty of the defendant to have had a sufficient number of men in the dock to take measures of precaution when the danger was approaching, and that he was answerable for the effects of the deficiency.

A servant is bound to act with good faith, and to consult the interests of his master, and may be dismissed for misconduct injurious thereto (*y*), though such misconduct does not relate to the servant's particular duties (*z*).

This is a general description of a class of cases resembling some of those already noticed. No very precise account of their nature can be given; and the Courts state variously the grounds upon which they base their decisions. Sometimes the failure to comply with this duty is described as a breach of trust; sometimes it is alleged that in the contract of master and servant is an implied term that "the servant shall act with fidelity towards his master" (*a*). All that can be done is to show by a few illustrations the manner in which Courts have acted with regard to this point. Disclosure of a master's trade or business secrets, disclosure of family secrets (*b*), disclosure of the accounts of a company to a person connected with another company (*c*), advising and assisting an apprentice to quit his master's service (*d*), entry by a clerk of a company on the margin of a minute-book of a protest against a resolution of the directors to call a meeting to appoint his

(*x*) (1807), 1 Camp. 138.

(*y*) *Arding v. Lomax* (1855), 24 L. J. Ex. 80.

(*z*) *Pearce v. Foster* (1886), 17 Q. B. D. 536 (C. A.).

(*a*) See the judgment of Turner, V.-C., in *Morison v. Mout* (1851), 9 Hare. 241, at p. 255, quoted by Kay, L. J., in *Robb v. Green*, [1895] 2 Q. B. 315, at

p. 319.

(*b*) *Per Best, C. J.*, in *Beeston v. Collyer* (1827), 2 C. & P. 607.

(*c*) *East Anglian Rail. Co. v. Lythgoe* (1851), 2 L. M. & P. 221; also *Mercer v. Whall* (1845), 5 Q. B. 447.

(*d*) *Turner v. Robinson* (1833), 5 B. & Ad. 789. See as to soliciting business, *Nichol v. Martyn* (1799), 2 Esp. 732.

successor (*e*), an acting manager ridiculing and finding fault with his master's arrangements and choice of plays so as to excite discontent among the actors (*f*), receiving money contrary to express orders (*g*), speculation on the Stock Exchange by the clerk of a merchant, whose customers consulted him as to their investments (*h*), secret receipt by a managing director of commissions from companies, with whom he contracted as agent for his employers (*i*)—in all these instances masters have been warranted in dismissing servants. And the Court will restrain by injunction, often accompanied by damages, the use or publication by clerks and servants, to the prejudice of the master whose service they have left, of information collected during their service with that master (*k*).

In *The Worthington Pumping Engine Co. v. Moore* (*l*), the defendant had been the sole and confidential agent and representative of the plaintiffs for the sale in England of their special pumps. The defendant had been dismissed. The plaintiffs asked for a declaration that the defendant held as trustee for the plaintiffs certain patents taken out by him while in their service in respect of improvements in the plaintiffs' pumps. Byrne, J., made the declaration asked for.

I recognise and quite appreciate the principle of those cases which have established that the mere existence of a contract of service does not, *per se*, disqualify a servant from taking out a patent for an invention made by him during his term of service, even though the invention may relate to subject-matter germane to, and useful for, his employers in their business, and that, even though the servant may have made use of his employer's time and servants and materials in bringing his invention to completion, and may have allowed his employers to use the invention while in their employment; but, on the other hand, without repeating what has been so fully and admirably expressed by the Court of Appeal in the two cases of *Lamb v. Evans* (*k*) and *Robb v. Green* (*k*), it is clear that all the circumstances must be considered

(*e*) *Ridgway v. Hungerford Market Co.* (1835), 3 A. & E. 171.

(*f*) *Lucy v. Osbaldiston* (1837), 8 C. & P. 80.

(*g*) *Bray v. Chandler* (1856), 18 C. B. 718.

(*h*) *Pearce v. Foster* (1886), 17 Q. B. D. 536. ("Conduct inconsistent with a faithful discharge of his duties.") The whole question is most fully discussed in this case.

(*i*) *Boston Deep Sea Fishing and Ice Co. v. Ansell* (1888), 39 Ch. D. 339.

(*k*) *Robb v. Green*, [1895] 2 Q. B. 1; *ibid.* 315 (C. A.). (Using for soliciting custom a list of his late master's cus-

tomers' names and addresses.) *Merryweather v. Moore*, [1892] 2 Ch. 518. (Taking away a table of dimensions of engines secretly compiled before leaving service.) *Helmors v. Smith* (2) (1886), 35 Ch. D. 449, particularly the remarks of Bowen, L. J., at p. 456. (Using a list of customers for the purpose of libelling his late master's business by circular.) And see *Tuck v. Priestler* (1887), 19 Q. B. D. 629; *Lamb v. Evans*, [1893] 1 Ch. 218. (Use of materials entrusted to defendants as employees of the plaintiff.) *Summers v. Boyce* (1907), 23 Times L. R. 724.

(*l*) (1902), 19 Times L. R. 84.

in each case. I consider that, bearing in mind the principles laid down in the authorities to which I have referred, it is impossible to say in the present case that the defendant has established the right he claims, having regard to the obligations to be implied arising from his contract of service, and I am of opinion that his case is inconsistent with an observance of that good faith which ought properly to be inferred or implied as an obligation arising from his contract (*m*).

Conduct on the part of a servant wholly inconsistent with his position as such, and showing an intention to assert another position than that which he properly has, would be good ground for discharging him. Thus, a claim to be a partner by a servant who at certain periods received a portion of the profits of a business, was held to exuse dismissal without notice (*n*). For the same reasons dismissal, in cases where a master has been robbed by a servant (*o*), or where the latter has been guilty of some act of dishonesty towards the master, would be warranted. Such would be the case even if the master sustained no loss (*p*). So, too, is desertion by a seaman—that is, abandoning a ship before the end of the time for which he is engaged without just cause and without the intention of returning. The question is always one of fact: Has the servant so conducted himself that it would be manifestly injurious to the interests of the master to retain him? (*q*). “I think,” said A. L. Smith, L. J., in *Robb v. Green* (*r*), “that it is a necessary implication, which must be grafted on such a contract, that the servant undertakes to serve his master with good faith and fidelity.”

(*m*) *l. c.* at p. 87.

(*n*) *Amor v. Fearon* (1839), 9 A. & E. 548; *Smith v. Thompson* (1849), 8 C. B. 44. (A servant appropriated to payment of his own salary, which was due, 30*l.*, part of a sum remitted to him by his master for business purposes; left to jury to say whether plaintiff guilty of wrongful appropriation.) *Horton v. McMurtry* (1860), 5 H. & N. 667. (Plaintiff, manager of defendant's factory, entered into a contract with C. for supply of bladders, which were necessary to defendant's business; the bladders were consigned to G., who let plaintiff have as many as he wanted for defendant's business; it did not appear that plaintiff charged defendant any more than he gave for them: good ground of discharge.) *Blenkarn v. Hodges' Distillery Co.* (1867),

16 L. T. (N. S.) 608. (Traveller of a distillery company bound to remit immediately all sums collected by him, sold some of the company's wines to brothel keeper, and neglected to remit sums immediately.) *Nichol v. Martyn* (1799), 2 Esp. 732. (A clerk or servant at liberty to solicit from his master's customers business to be given him after he quits his master's service; not so in case of orders to be given him while in master's service.)

(*o*) Lord Ellenborough in *Trotman v. Dunn* (1815), 4 Camp. 211; *Cunningham v. Fonblanque* (1833), 6 C. & P. 44, 49; *Spotswood v. Barrow* (1850), 5 Ex. 110.

(*p*) *Brown v. Croft* (1828), 6 C. & P. 16 (*n.*).

(*q*) Vaughan, J., in *Lacy v. Osbaldeston* (1837), 8 C. & P. 80.

(*r*) *l. c.* at p. 320.

A servant (domestic) may be dismissed for gross acts of immorality, unfitting him for his duties.

Thus a female domestic servant who, while in the service of her master, is delivered of a bastard child, may be dismissed (*s*). So if a man servant debauches a female servant, both may be dismissed (*t*). A clerk who assaulted his master's maid-servant with intent to ravish her, was held to be rightly dismissed (*u*). Habitual drunkenness, if it interfered with the due discharge of a servant's duties, would justify dismissal (*x*). The authorities are not clear as to the limitations, if any, with which the above principle must be taken. They lay it down as a general rule that gross immorality on the part of a servant will be a good reason for the master putting an end to the contract. But, it is submitted, that proposition is too wide.

Acts of immorality on the part of a governess, a secretary, a menial servant, or other members of a household, during the time they were employed, would naturally warrant a master in discharging them; such conduct unfits them for their place. In *Kemp v. Cuddington School Board* (*y*) a headmaster was charged with assault upon a girl and subsequently acquitted. Before his trial and after his committal he was dismissed without notice; he immediately issued a writ claiming an injunction and salary from date of dismissal to the date of his getting another place; the trial of the action came on after his acquittal; he recovered the salary claimed, with costs, and the costs of the claim for the injunction.

But it is not to be supposed that a cotton manufacturer would be at liberty to discharge one of his hands without notice, or that a newspaper proprietor could dismiss a reporter because he had

(*s*) *R. v. Brampton* (1777), Cald. 11; *Connors v. Justice* (1862), 13 Ir. C. L. 451. As to the examination of a servant alleged to be *enchanté*, see *Latter v. Braddeli* (1881), 50 L. J. Q. B. 448.

(*t*) *R. v. Welford* (1778), Cald. 57; but see *R. v. Westmeon* (1781), Cald. 129.

(*u*) *Atkin v. Aeton* (1830), 4 C. & P. 208.

(*x*) *Speck v. Phillips* (1839), 5 M. & W. 279, 281; *Wise v. Wilson* (1845), 1 C. & K. 662; *McKellar v. Macfarlane* (1852), 15 D. (2nd Ser.) 246; *Edwards v. Mackie* (1818), 11 D. (2nd Ser.) 67; *New Phoenix* (1823), 1 Hagg. Ad. 198. There has

been a considerable amount of discussion in the Scotch cases as to when intoxication is a ground for dismissal. Mr. Wood seems to indicate the true rule when he says: "In all such cases it is for the jury to say, in view of the position occupied by the servant and the particular circumstances, whether his discharge is reasonable. A minister who should become intoxicated on any occasion would, of course, be subject to instant dismissal, because inconsistent with his position; but a farm labourer or a clerk, when off from duty, upon a holiday, would not"; p. 212.

(*y*) (1893), 9 Times L. R. 301.

been guilty of immorality which was totally unconnected with his duties and did not affect his reliability as a servant or his fitness to perform those duties (z). The question is discussed in *Pearce v. Foster (a)*, where Lord Esher, M. R., thus deals with it:—

The rule of law is, that where a person has entered into the position of a servant, if he does anything incompatible with the due or faithful discharge of his duty to his master, the latter has a right to dismiss him. The relation of master and servant implies necessarily that the servant shall be in a position to perform his duty duly and faithfully, and if by his own act he prevents himself from doing so, the master may dismiss him. . . . What circumstances will put a servant into the position of not being able to perform, in a due manner, his duties, or of not being able to perform his duty in a faithful manner, it is impossible to enumerate. . . . But if a servant is guilty of such a crime outside his service as to make it unsafe for a master to keep him in his employ, the servant may be dismissed by his master (b); and if the servant's conduct is so grossly immoral that all reasonable men would say he cannot be trusted, the master may dismiss him.

A servant may be dismissed for gross insolence or rudeness to his master.

In most of the cases in which this point was considered, there was insubordination or disobedience. But gross insolence would also warrant dismissal. Each case must be considered by itself; the social rank and position of the parties and the habits and customary language of people in their condition of life must be taken into account. It is useless to try to give more precision to a matter which is peculiarly one of degree. When an action was brought by a musical critic against a newspaper proprietor

(z) "It would appear that improper conduct out of the master's household is not a ground of dismissal, unless, indeed, it can be shown to be prejudicial to the master, and hurtful to his feelings or reputation": Fraser, ii. p. 413. And see *Lead v. Dunsmore*, 9 C. & P. at p. 594.

(a) (1886), 17 Q. B. D. 536. See *Fletcher v. Krell* (1873), 42 L. J. Q. B. 55, which turns on a point of pleading; *Rex v. Westmeon* (1781), Cald. 129. "Here are four days wanting in the service" (necessary to gain a settlement), "and it is by means of his own act that the servant becomes incapable of completing it. His conduct is an offence

against morality and the laws . . . and the consequences of it are equivalent to a wilful absence": per Mansfield, C. J., at p. 134. And see the remarks of Lord James of Hereford delivering the judgment of the Privy Council in *Clouston v. Corry*, [1906] A. C. 122, 129.

(b) See *Thayre v. London, Brighton & South Coast Rail. Co.* (1906), 22 Times L. R. 240, where a servant, who had been convicted of conspiracy to defraud a bookmaker and dismissed by the defendants, was held to have come within a rule providing that, if "dismissed the service for dishonesty," any contributing member should forfeit all his contributions to the superannuation fund.

for wrongful dismissal, and the latter pleaded that the former had been negligent and insolent, Hill, J., said, "A single instance of insolence on the part of a gentleman employed in such a capacity would hardly justify dismissal" (*c*). No doubt the change in manners and usage would be taken account of in deciding this class of cases—what might have once been regarded as insolence would often now be viewed by a judge or jury as only independence.

A servant is bound to possess reasonable skill in performing the duties which he undertakes, and gross incompetence will justify dismissal.

"The public profession of an art," said Mr. Justice Willes in *Harmer v. Cornelius* (*d*), "is a representation and undertaking to all the world that the professor possesses the requisite ability and skill." No express representation of fitness is necessary. A warranty of this is implied in the fact that a man holds himself out as a doctor, or an architect, or a painter, or a ploughman. No doubt this would not hold good if the employer had notice of the incompetence of his servant before engaging him, or if he chose to employ him in work for which he did not profess to be specially fitted (*e*); as if, to take the case related by Sadi in his *Gulistān* and utilised by Sir William Jones in his essay on *Bailments*, a man who has a disorder of the eyes should consult a farrier for the remedy (*f*). It is equally clear that there is no implied undertaking on the part of a servant to use the highest possible skill. The circumstance that some other workman would have done better what was undertaken is no proof that there was a want of care or skill warranting dismissal, or an action for negligence, or a deduction in remunera-

(*c*) *Edwards v. Lory* (1860), 2 F. & F. 91; *Smith v. Allen* (1862), 3 F. & F. 157; *Handyside v. Arthur*, Campbell's edition of Fraser's *Master and Servant*, p. 71; *Selby v. Baldry* 1867, 5 S. L. R. 64. As to master's right to turn out of his house a servant who makes a noise and disturbs the peace of the family, *Shaw v. Chairtie* (1850), 3 G. & K. 21.

(*d*) (1858), 5 C. B. N. S. 236; 28 L. J. C. P. 85. (A scene-painter dismissed for incompetence.) *Slater v. Baker* (1767, 2 Wils. 359; *Seare v. Prentice* (1807), 8 East, 348; *Jenkins v.*

Bellham (1855), 15 C. B. 168; *Searle v. Ridley* (1873), 28 L. T. 411. (Servant dismissed for incompetence without notice: held, not entitled to wages.) *Lee v. Walker* (1872), L. R. 7 C. P. 421; *Bulmer v. Gilman* (1842), 4 M. & G. 108; Pothier, *Louage*, 419 to 433; Story on *Bailments*, s. 428.

(*e*) Willes, J., in *Harmer v. Cornelius* (1858), 28 L. J. Q. B. 85; *Shields v. Blackburne* (1789), 1 H. B. 158.

(*f*) Jones on *Bailments*; Works, vol. viii. 430.

tion (g). The degree of diligence required will vary according to the delicacy and importance of the occupation (h).

A servant may be dismissed if from sickness or other cause he becomes for an unreasonable time or permanently unable to perform his duties. But if the servant be not dismissed, sickness will be no defence to an action for wages.

This principle was affirmed in *Cuckson v. Stones* (i). The plaintiff had agreed to serve the defendant as a brewer for ten years at 2*l.* 10*s.* a week. The plaintiff was taken ill at Christmas, 1857, and was unable to attend to his work until July, 1858. He then tendered his services, and was again employed about the brewery. After March, 1858, the defendant refused to pay the plaintiff any wages for thirteen weeks, till July, 1858, when he again attended personally to the business, and was paid wages according to the agreement. In an action for wages for the thirteen weeks in question, it was admitted that the contract had not been rescinded. The defendant set up the defence that the plaintiff was not ready or willing and able to render the agreed service. The plaintiff demurred; and the Court gave judgment for the defendant on the demurrer. But on a motion to set aside the verdict obtained by the plaintiff, the Court refused to enter judgment for the defendant.

Looking to the nature of the contract sued upon in this action, we think that want of ability to serve for a week would not of necessity be an answer

(g) *Tindal, C. J.*, in *Lauphiér v. Phipos* (1838), 8 C. & P. 475, 479; *Rich v. Pierpont* (1862), 3 F. & F. 35.

(h) Dig. lib. xix. tit. II. s. 13, § 5; Story on *Bailments*, s. 432; Pothier, *Louage*, c. II. s. 4, a. 1. See also Cockburn, C. J., *Reasons for Dissent in regard to Alabama Award*, Supplement to London Gazette, 1872, 4139, as to standard of diligence. *Hinshaw v. Adam* (1870), 8 M. 933.

(i) (1858), 1 E. & E. 248; Campbell, C. J., there (p. 257) observes: "He (the servant) could not be considered incompetent by illness of a temporary nature." *Carr v. Hadrill* (1874), 39 J. P. 246. (Wages in lieu of notice recovered by workman who was summarily dismissed after five weeks' absence from work on sick pay.) *Warren v. Whittingham* (1902), 18 Times L. R. 508; and see per Bramwell, B., in *Jackson v. Union*

Marine Insurance Co. (1874), L. R. 10 C. P. 125, 145; and per Blackburn, J., in *Poussard v. Spiers* (1876), 1 Q. B. D. 410, 414. The law is thus stated by Mr. Bell in his *Principles*. Sickness, or inevitable accident, "will excuse non-performance for a short time; but if the inability should continue long, and a substitute should be required, the master will be discharged from his counter obligation to pay wages," sect. 177, 6th ed. Sickness or incapacity to serve on the part of an apprentice, however, does not, in the absence of special agreement, discharge his master from the covenant to provide for and maintain him; he takes the apprentice for better or worse: Addison on *Contracts* (9th ed.), 861; *R. v. Hales Owen* (1717), 1 Str. 99. Nor is it an answer to an action by the apprentice for wages: *Patten v. Wood* (1887), 51 J. P. 549.

to a claim for a week's wages, if in truth the plaintiff was ready and willing to serve had he been able to do so and was only prevented from serving during the week by the visitation of God, the contract to serve never having been determined. . . . If the plaintiff, from unskillfulness, had been wholly incompetent to brew, or, by the visitation of God, he had become, from paralysis or any other bodily illness, permanently incompetent to act in the capacity of brewer for the defendant, we think that the defendant might have determined the contract. . . . The contract being in force, we think that here there was no suspension of the weekly payments by reason of the plaintiff's illness and inability to work (*k*).

In *Storey v. Fulham Steel Works Co. (l)*, the defendants agreed in August, 1903, to employ the plaintiff for five years as their works manager. Towards the end of 1905 the plaintiff fell ill, and was absent from work from time to time. In January, 1906, his illness became more serious, and he was ordered complete rest for a considerable time and special treatment. He left work. The defendants gave him notice to terminate his contract in April, 1906. In May, 1906, the plaintiff had recovered and was fit for work. Channell, J., held that he was entitled to recover damages for breach of the contract of employment, on the ground that in May, 1906, "the circumstances were not such as to justify the defendants in thinking that the plaintiff never would be able to perform the remainder of the agreement."

In the course of his judgment Channell, J., says:—

The agreement was for five years, and it contained no provision . . . for putting an end to it by notice . . . and it was clear, as a matter of law, that if such an agreement was made, and if the servant was absent from time to time through illness, the loss fell upon his employer. . . . That was clear in the case of an illness that was admittedly temporary. In the case of a permanent illness, or if some injury happened to the servant . . . permanently incapacitating him from doing the work, the employer could give the notice then and there. . . . If the illness of a servant under an agreement, such as that in the case before him, was of such a character as to indicate that the servant never would be able to perform his contract, and something had to be done at once to supply his place, the contract could be put an end to by the employer. . . . That was not the present case.

While permanent inability or incompetence owing to sickness would, as the above case shows, warrant dismissal, it would be

(*k*) Per Campbell, C. J., in *Cuckson v. Stones, l. c.* at pp. 256, 257. In *Niblett v. Midland Rail. Co.* (1907), 23 Times L. R. 240, a railway servant had joined the defendants' friendly society, to whose funds the defendants contributed. By the society's rules a member was not entitled to sick pay while receiving wages from the company. The

plaintiff was ill and received sick pay, doing no work, from February to September, 1905, when he was discharged. *Held*, that he could not recover wages for the period from February to September.

(*l*) (1907), 23 Times L. R. 306; affirmed by C. A. (1907), 24 Times L. R. 89.

a good defence in an action for non-performance of service or in an action on a covenant. This was decided in *Boast v. Firth* (*m*), which was an action against the father of an apprentice by a master for breach of a covenant in an indenture of apprenticeship. The defendant, the father of the apprentice, pleaded that his son was prevented by the act of God, to wit, by permanent illness, happening and arising after the making of the indenture, from remaining with or serving the plaintiff. This was considered a good plea, it being in the contemplation of parties to all contracts for personal services that the parties to them should be able to perform them.

The right of a servant to wages during temporary sickness is not quite clear. Some writers have drawn a distinction between illness caused by the servant's own fault and that for which he is not to blame (*n*). But the authorities, on the whole, show that if the contract of service remains in force, a servant, even if ill, will be entitled to his wages. In *Cuckson v. Stones* the Court observed :—

It is allowed that under this contract there could be no deduction from the weekly sum in respect of his having been disabled by illness from working for one day of the week ; and, while the contract remained in force, we see no difference between his being so disabled for a day, or a week, or a month (*o*).

It is for the jury to say whether the facts alleged against a servant constitute a reason for dismissal.

The practice as to this has been by no means uniform. In *Ridgway v. The Hungerford Market Co.* (*p*), the jury were

(*m*) (1868), L. R. 4 C. P. 1; *Taylor v. Caldwell* (1863), 3 B. & S. 826, 839; *Appleyby v. Meyers* (1866 and 1867), L. R. 1 C. P. 615; L. R. 2 C. P. 651, reversing decision of Court of Common Pleas; *Robinson v. Davison* (1871), L. R. 6 Ex. 269 (performance of contract to play at a concert excused on the ground of illness).

(*n*) See Campbell's edition of Fraser on *Master and Servant*, p. 140. See p. 123, n. (*e*), *supra*.

(*o*) (1858), 1 E. & E. 248, 257; *R. v. Islip* (7 Geo. I.), Str. 422; *Rex v. Sudbrook* (1803), 1 Smith, 55; *Rex v. Winterset* (1783), Cald. 298; *Ex parte Harris* (1845), 1 De Gex, 165; *Carr v. Hadvill* (1874), 39 J. P. 246; *K. v. Rasehen* (1878), 38 L. T. 38. (No answer to an action for wages that plaintiff was

ill and unable to work owing to his own misconduct.) *Warren v. Whittingham* (1902), 18 Times L. R. 508. In *Rex v. Sutton* (1794), 5 T. R. 657, it was held that absence in order to cure a hurt received by a servant in his master's service, or from insanity, does not by itself determine the relation of master and servant. See also as to insanity being ground of discharge, *R. v. Hulcott* (1796), 6 T. R. 583. See *Swiss Code of Obligations*, A, 341: "Celui qui a engagé ses services à long terme ne perd pas ses droits à la rémunération alors qu'il est empêché d'acquiescer de son obligation pendant un temps relativement court et sans faute, pour cause de maladie, de service militaire, ou telle autre analogue."

(*p*) (1835), 3 A. & E. 171.

asked to decide whether entering a protest on the margin of a minute-book was a good ground for dismissal. In *Amor v. Fearon* (q), Denman, C. J., told the jury that if a servant claimed a right to overhaul his master's accounts, that would justify putting an end to the relation of master and servant. But he left it to the jury to say whether there was a reasonable ground for dismissal. It was objected that he ought to have decided this question himself. But the Court decided that there was no misdirection. And this is the view taken by the Privy Council in *Clouston & Co., Ltd. v. Corry* (r).

It is not necessary that a servant should be dismissed by his master for a valid reason; it is sufficient if a valid reason in fact exists, even if the master be not aware of it at the time of dismissal.

There has been much discussion as to the limits of this rule, and considerable reluctance to adopt it. It was first laid down in *Ridgway v. The Hungerford Market Co.* (s). It was followed in *Baillie v. Kell* (t), and has been affirmed by the Court of Appeal in *Boston Deep Sea, &c. Co. v. Ansell* (u). In *Baillie v. Kell* (t) it was supported by the analogy of justification in actions of trespass and wrongful distress. A defendant may justify breaking and entering plaintiff's close under any sufficient legal process open to him at the time, and a person who is sued for distraining wrongfully may set up in justification any legal cause, even although in fact he distrained for another (v). So it was said that it mattered not what ground for dismissal the master alleged; it was enough that he had some good ground. At all events, the servant suffered no wrong (y).

The rule was qualified thus in *Cussons v. Skinner* (z), by Baron Parke: where there has been "disobedience or an act of

(q) (1839), 9 A. & E. 518.

(r) [1906] A. C. 122. See also *Read v. Dunsmore* (1810), 9 C. & P. 5; *Mercer v. Whall* (1845), 5 Q. B. 447; *East Anglian Rail. Co. v. Lythgoe* (1851), 20 L. J. C. P. 84; *Horton v. McMurtry* (1860), 29 L. J. Ex. 260; 5 H. & N. 667; *Price v. Mowatt* (1862), 11 C. B. 508.

(s) See note (p). The head-note to the report of this case limits the doctrine to cases in which the master had no knowledge of the facts constituting the

justification. But no such limitation appears in the judgments.

(t) (1838), 4 Bing. N. C. 638.

(u) (1888), 39 Ch. D. 339, at pp. 352, 358, 364.

(v) *Crowther v. Ramsbottom* (1798), 7 T. R. 654; *Grenville v. College of Physicians* (12 Will. III.), 12 Mod. 386.

(y) See *Mercer v. Whall* (1845), 5 Q. B. per Denman, C. J., at p. 466.

(z) (1843), 11 M. & W. 161, 172; *Smith v. Allen* (1862), 3 F. & F. 157, the ruling in which seems doubtful.

misconduct by a servant, known to the master at the time he discharges him, although he does not insist on that as the precise ground of the discharge, he may afterwards, by showing the fact existed, and that he knew it, justify such discharge." The introduction of this qualification was not necessary for the decision of the case, and it is to be observed that the Court quote as their authority *Ridgway v. The Hungerford Market Co.* (s), where no such limitation is mentioned. In *Spotswood v. Barrow* (a), the Court of Exchequer followed *Ridgway v. The Hungerford Market Co.* The plaintiff, a traveller, was discharged by the defendants, his employers. They pleaded as a defence the fact that he had refused to obey lawful orders, and that he had misappropriated money paid to him by their customers. The misappropriation was proved at the trial; and the judge left it to the jury to say whether or not the defendants discharged the plaintiff for that cause. This was held to be a misdirection; the motives or intentions of the defendants being immaterial, if their conduct was in fact justified. In *Boston, &c. v. Ansell* (b) the defendant took secret commissions from persons with whom the plaintiff company, his employers, dealt. The plaintiffs, not knowing this, dismissed him on other grounds which they could not substantiate; afterwards they came to know of the bribery, and were permitted to justify the dismissal on that ground.

The fact of knowledge, however, may be sometimes material. According to one case, if it be alleged in the pleadings that the master have knowledge of certain facts, and that they were the reasons of dismissal, it may be incumbent on him to prove such knowledge (c); but, it is conceived, this is not correct. Knowledge might be material in regard to the question of condonation (d).

When a servant is discharged for a valid reason before the expiration of the time for which he was engaged, he cannot recover the value of services which he has rendered under the contract.

This follows from the nature of indivisible contracts. Of course a servant does not forfeit wages which are due but not paid. The

(a) (1850), 5 Ex. 110. See Alderson, B., in *Willeys v. Green* (1850), 3 C. & K. 59.

(b) (1888), 39 Ch. D. 339, at pp. 352, 358, 364.

(c) *Mercer v. Whall* (1845), 5 Q. B. 447, 466, per Denman, C. J.

(d) See *Boston, &c. v. Ansell*, l. c. at p. 358, per Cotton, L. J. The rule has not been followed in America. Query: would a servant be able to set up, as ground of departure from service, a fact which he did not know at the time?

above doctrine was enunciated by Lord Ellenborough, who in a case at Nisi Prius in 1817—an action by a farm servant who had been dismissed for disobedience (*d*)—said: “If the contract be for a year’s service, the year must be completed before the servant is entitled to be paid.” The rule does not seem to have been clearly settled in 1833, as appears from the remarks of Denman, C. J., in *Turner v. Robinson* (*e*). But it was laid down in *Ridgway v. Hungerford Market Co.* (*f*), and *Litley v. Elwin* (*g*); and has often been acted upon. It is equally clear that he cannot recover on a *quantum meruit*, “because he cannot take advantage of his own wrongful act to insist that the contract is rescinded” (*h*). The same principle was recognised in the Court of Admiralty with respect to forfeiture of wages by desertion. It has, however, been modified by 57 & 58 Viet. c. 60, ss. 221 and 225 (*i*).

A master is entitled to all the earnings of his apprentice.

The master is entitled to the earnings acquired or commission received by his servant while the latter is acting as servant.

There is no doubt as to the master’s right to the earnings of his apprentice. It is affirmed in several cases, none of which have been overruled, that a master may sue for what his apprentice has earned, even when serving with some other person. In *Barber v. Dennis* (*k*), the apprentice of the widow of a waterman was im-

(*d*) *Spain v. Arnott*, 2 Stark. 256.

(*e*) (1833), 6 C. & P. 15.

(*f*) (1835), 3 A. & E. 171.

(*g*) (1848), 11 Q. B. 742; *Searle v. Ridgway* (1873), 28 L. T. 411; *Boston, &c. v. Ansell*, see note (*b*). Of course the forfeiture will not affect wages which have already accrued due, or commissions already honestly earned under the contract of service: *Boston, &c. v. Ansell*, see note (*b*); or to piece-work: *Margerison v. Bertwistle* (1872), 36 J. P. 100. In *Button v. Thompson* (1869), L. R. 4 C. P. 330, a mate, engaged at 5*l.* 10*s.* per month, under articles sanctioned by the Board of Trade, who was left behind through his own fault at one of the ports at which the ship stopped, was held entitled to his wages up to the time of being left behind. See also *Taylor v. Laird* (1856), 1 H. & N. 266.

As to cases in which the contract of hiring expressly provides for forfeiture of wages, see *Taylor v. Carr* (1861), 30 L. J. M. C. 201; *Walsh v. Walley* (1874), L. R. 9 Q. B. 367; *Warburton v. Toff Vale Rail. Co.* (1902), 18 Times L. R. 420, where it was held that the defendants could not, under their rules, on dismissing the plaintiff after a fortnight’s suspension, deprive him of wages both during suspension and in lieu of notice. As to entire and divisible contracts of service see pp. 119 *et seq.*, *supra*; and p. 619, n. (*l*), *infra*.

(*h*) *Boston, &c. v. Ansell*, see note (*b*), and the judgment there of Bowen, L. J., at p. 364.

(*i*) MacLachlan on *Law of Merchant Shipping*, 3rd ed. 240.

(*k*) (1783), 6 Mod. 69; *Anon.*, 12 Mod. 415.

pressed, and put on board a Queen's ship, where he earned two tickets; they came into the hands of the defendant. It was held that trover for the tickets lay. It seems clear that, to recover his apprentice's earnings, a master must prove the execution of the indenture; and he would, apparently, fail if it were shown that he had licensed the apprentice to leave him (*l*).

The same principles appear to extend to servants. "They apply," said Cockburn, C. J., in *Morison v. Thompson* (*m*), "to all cases of employment as servants or agents, the profits acquired by the servant or agent in the course of, or in connection with, his services or agency belonging to the master or principal"; in other words, if the servant receives such earnings or profits he will be treated as the agent of his master, and an action for money had and received will lie at the instance of the latter (*n*); or the servant will be ordered to account and pay over (*o*). No doubt a master, as between himself and his servant or apprentice, is entitled to all which the servant or apprentice, as such, earns; but as against third persons the master would seem to have a right to his servant's earnings only when he acted as his master's agent.

By the Prevention of Corruption Act, 1906 (6 Edw. 7, c. 34), it is made a misdemeanour:

- (1) For any "agent" corruptly to accept any gift or consideration in relation to his "principal's" business;

(*l*) *Anon.* (1783), 6 Mod. 70.

(*m*) (1874), L. R. 9 Q. B. 480. See also *Thompson v. Harlock* (1808), 1 Camp. 527.

(*n*) This case does not, however, it is submitted, overrule *Tressell v. Middleton*, Cro. Jac. 653; 2 Roll. 269. (Judgment for plaintiff, in action for debt against defendant who had retained his servant to make chairs for five days. Judgment reversed; debt did not lie because it may be the master never consented to the retainer, and the servant never intended to contract for his master.) *Carson v. Watts* (1784), 3 Doug. 350. (Prize-money gained by apprentice serving on board ship-of-war does not belong to master of apprentice. This turned on usage.) *Eades v. Vandeput* (1785), 5 East, 39 n.; but see *Foster v. Stewart*, *infra*. *Bright v. Lucas* (1796), 2 Peake, 121. (Indentured apprentice who had deserted from his master's service into the service of another cannot maintain action for wages against the latter.) *Lightly v. Clouston* (1808). (The master of apprentice who has been seduced from his work may maintain action of *indebitatus assumpsit* against the person who has seduced him.) *Foster v. Stewart* (1814), 3 M. & S. 191. (Plaintiff's

apprentice deserted from plaintiff's ship; went on board defendant's ship; defendant persuaded him to remain: *held*, plaintiff could waive tort and bring action of *assumpsit* against defendant.)

(*o*) *Boston, &c. v. Ansell* (1888), 39 Ch. D. 339. (Bonuses paid to managing director of the plaintiff company, as a shareholder in other companies, with which he made contracts on behalf of the plaintiffs. Account and payment of such profits to plaintiffs ordered.) *Lister & Co. v. Stubbs* (1890), 45 C. D. 1. (Foreman having received secret commissions in respect of orders given for his employers is liable to them as a debtor, but not as a trustee so that they should be allowed to follow the money so received into investments.) *Mayor, &c. of Salford v. Lever* (1890), 25 Q. B. D. 363, where it was decided that in addition to the right of action against the servant for the amount of the bribes received, there was another independent cause of action for damages against the briber and the servant, jointly or severally, for the loss sustained by the employer from having entered into the contract under advice given by the servant in pursuance of the bribe.

- (2) For any person corruptly to give an "agent" any gift or consideration in relation to his "principal's" business;
- (3) For any person to give an "agent," or for any "agent" knowingly to use any document, &c. with intent to mislead his "principal."

By sect. 1, sub-sect. (2), "agent" includes any person employed by or acting for another; and "principal" includes an employer.

If a master hires a servant to design or invent, the inventions belong to the master. Such was the case in *Makepeace v. Jackson* (*p*), in which a calico printer was held entitled to a book in which his colour-man entered the recipes of processes, although the book contained processes invented by the latter. And the particular conditions of the employment may make an employee trustee for his master of patents taken out in respect of improvements discovered by the employee during his term of service (*q*). Should a master discover some valuable invention, and a workman whom he employs make a discovery subordinate and accessory to it, "such improvements," it has been said, "are the property of the inventor of the original improved principle, and may be embodied in his patent; and, if so embodied, the patent is not avoided by evidence that the agent or servant made the suggestions of that subordinate improvement of the primary and improved principle" (*r*). But if an invention be discovered by a servant, the master, not being the first and true inventor, cannot get a patent (*s*); nor can he prevent the servant from taking out a patent for it (*t*). Accordingly Arkwright failed to obtain a patent for a certain roller when it was proved that he had been told of it by one Kay, whom he had had in his service and whom he employed in making models (*u*).

(*p*) (1813), 4 Taunt. 770. Here, however, the action was in trover for the book. *Pashley v. Linotype Co., Ltd.* (1903), 20 Rep. Pat. Cas. 633. Plaintiff employed by defendants to devote his whole time to improving a machine. He made several improvements in respect of some of which patents were taken out by the masters at their expense, but in the joint names of themselves and the plaintiff. The plaintiff, having been dismissed, brought an action alleging an agreement to pay him a reasonable remuneration in respect of all improvements whether patented or not. A right to reasonable remuneration for the patents was admitted. The jury awarded him 310*l*.

for the patented improvements.

(*q*) *Worthington, &c. v. Moore* (1902), 19 Times L. R. 81. See remarks of Byrne, J., *ibid.*, p. 87, quoted at p. 176, *supra*.

(*r*) Erle, J., in *Allen v. Rawson* (1845), 1 C. B. 551, 567. And see *Bloxam v. Elsee* (1825), 1 C. & P. 558; *Rollo v. Thompson* (1857), 19 D. 994.

(*s*) *Rex v. Arkwright* (1785), cited in *Hill v. Thompson*, 8 Taunt. (1818), 375, 395.

(*t*) *In the matter of Hald's Applications for Patents* (1891), 8 Rep. Pat. Cas. 429.

(*u*) Curtis, *Patent Law*, 101. And see *Re Russell's Patent*, 2 De G. & J. 130.

An apprentice cannot be dismissed by his master for misconduct unless there be a stipulation to that effect in the indenture of apprenticeship.

This is the common law rule; and, indeed, the old cases would seem to show that not even a conviction for felony would justify dismissal (*x*); but the tendency of the Courts is to qualify this rule (*y*). Perhaps it would be more correct to say that the misconduct which would entitle a master to dismiss a servant will not entitle him to dismiss an apprentice.

Thus, in an action against a master for refusing to instruct and maintain an apprentice, in which the former set up as a defence disobedience of orders and other acts of misconduct, the Court drew a distinction between the relation of master and servant and that of master and apprentice, and held that the latter contract could not be dissolved for acts of misconduct.

"The master has at common law a complete remedy, if the apprentice misconducts himself, by an action for a breach of the covenants. The provisions contained in the statute relative to parish apprentices (*z*) show that, at common law, the master could not determine the contract if the apprentice misconducted himself" (*a*).

So, in *Phillips v. Clift* (*b*), it was held to be no answer to an action against the master who had turned away his apprentice, that he conducted himself in so dishonest a manner that it became unsafe for the defendant to keep him in his service. The covenants in the indenture were independent; the master might have chastised his apprentice; he could not dismiss him (*c*). But a power to dismiss may be provided by the terms of the deed. Thus, where a master agreed to take plaintiff's son as an apprentice for

(*x*) See Anstyn on *Apprentices*, 69.

(*y*) See *Cox v. Mathews* (1861), 2 F. & F. 397. "If the plaintiff was in the habit of stealing, as the defendant alleges, the defendant would not be bound to have him in his shop to instruct him": quoted with approval by A. L. Smith, J., in *Leary v. Brook*, [1891] 1 Q. B. 431, at p. 434; though both these cases were actions by the apprentice on the covenant to teach.

(*z*) 20 Geo. II. c. 17.

(*a*) Per Best, C. J., in *Winstone v. Linn* (1823), 1 B. & C. 460, 470; *Wise v. Wilson* (1845), 1 C. & K. 662, per Denman, C. J., at p. 669.

(*b*) (1859), 4 H. & N. 168. See also *Addams v. Carter* (1852), 6 L. T. (N. S.) 130; *Mercer v. Whall* (1845), 5 Q. B. 447. In *Wise v. Wilson* (1845), 1 C. & K. 662, Denman, C. J., ruled that a doctor might dismiss a "pupil and assistant" if he endangered his master's practice by carelessness. On the other hand, probably, an apprentice, having reasonable grounds for fearing grievous bodily harm, may leave the service of his master: *Hallivell v. Counsell* (1878), 38 L. T. 176; 56 Geo. III. c. 139.

(*c*) See the remarks of A. L. Smith, J., on this case in *Leary v. Brook*, [1891] 1 Q. B. 431, 434.

three years and to teach him, and the agreement concluded, "provided always that he (the apprentice) obeys all commands and gives his services entirely to the business during office hours," misconduct on the part of the apprentice was held a good answer to an action for dismissing the apprentice (*d*). The master's usual remedy is to apply under the Employers and Workmen Act, 1875, to have the instrument of apprenticeship rescinded, or to sue the parent or other surety on the covenant—a liability which continues after the apprentice has attained his majority (*e*).

There is an absence of authority in English law as to the place at which a servant is bound to serve (*f*). The point has been discussed in the Scotch Courts, and the following is said to be the rule on the subject:—"It seems to be the general opinion of lawyers that all domestic servants, secretaries, and other servants similarly circumstanced whose duties have relation solely to the master's presence are bound to attend his movements, and cannot object to go with him from country to town, from town to country. But this under the following conditions: No servant is bound to go out of the British Isles to a foreign country, seeing that there he is without the protection of British law, and in circumstances, it may be, far different from those under which he would have lived in his own country" (*g*). "In the case of servants whose work has reference to a *place*, not to the master's *person*, such as overseers, ploughmen, or workmen at manufactories, the master cannot remove the servant to any other farm or manufactory at any distance inconvenient to the servant (*h*). The place where the master has his work at the time of the engagement would be held the place where (in the absence of express stipulation) it is implied that the servant was to labour; and, having once entered to his service, he cannot be removed to any place which may occasion him trouble or expense" (*g*). To entitle the servant to refuse to serve, the inconvenience must be real: that is a question of degree, and turns on the facts of each case.

(*d*) *Westwick v. Theodor* (1875), L. R. 10 Q. B. 224; *Maw v. Jones* (1890), 25 Q. B. D. 107. It is a good plea to an action for not teaching an apprentice, that the conduct of the apprentice was such as to prevent it; *Raymond v. Minton* (1866), L. R. 1 Ex. 244; *Leatroyd v. Brook*, [1891] 1 Q. B. 431.

As to damages for breach of covenant in an indenture of apprenticeship: *Lewis*

v. Peachey (1862), 1 H. & C. 518; 31 L. J. Ex. 496.

(*e*) *Cuning v. Hill* (1819), 3 B. & Ald. 59.

(*f*) As to apprentices, see p. 150, *supra*.

(*g*) *Fraser's Law of Personal and Domestic Relations*, vol. ii. 416, 417.

(*h*) See *Anderson v. Moon* (1837), 15 S. 412.

The above distinction between servants whose work has reference to a place, and those whose work has reference to a master's person, seems to be recognised in most systems of jurisprudence (*i*); and, it is submitted, is sound (*k*).

It was decided in *Cocentry v. Woodhull* (*l*) that "generally no man can force his apprentice to go out of the kingdom, unless it be so expressly agreed, or that the nature of his apprenticeship doth import it, as if he be bound apprentice to a merchant adventurer or a sailor, or the like."

(*i*) Savigny, *Obligationenrecht*, I. 49;
Levi, *Della Locazione*.

(*k*) See n. (*u*), p. 161, *supra*.
(*l*) (1616), Hob. 134.

APPENDIX.

1. The rules stated in the text as to the circumstances in which servants may be dismissed have been recognised for many years. It was, however, long supposed that a master had no right to dismiss a servant for disobedience or misconduct. In 19 Hen. VI. 30, cited in Brookes' Abridgment, title "Labourers," 27, it is said, "It seems the master cannot discharge his servant within the time, &c., unless he agree to it, no more than a servant can depart without the agreement of his master." See, however, Fitzherbert, 168. In Dalton's Justice, edition of 1697, p. 128, the same view is stated,— "The master cannot discharge his servant, during his term, without the agreement of the servant. And now by the statute 5 Eliz. 4, it must be for some reasonable cause to be allowed by one justice of the peace at least; otherwise the master shall forfeit forty shillings. *Tamen quere*. For where the departure or putting away of the servant is by the joint consent of the master and of the servant, such putting away or departure, seemeth not to be within the statute of 5 Eliz., neither is the allowance of the justice of the peace requisite or needful therein." "If a servant shall refuse to do his service, that is a departure in law, although he stay still with his master. If the master shall detain from his servant his wages, meat or drink, this is a good cause of departure: But yet this cause is now by the statute of 5 Eliz. to be allowed of by the justices of peace, before the servant may lawfully or safely depart. So if the master shall license his servant to depart, or if the master, or wife of the master shall beat the servant; these were good causes for the servant to depart, before the statute 5 Eliz. 4. But now the allowance of the justice of the peace is requisite as aforesaid." The fifth section of 5 Eliz. c. 4, stated "that no person which shall retain any servant shall put away his or her said servant unless it be for some reasonable and sufficient cause or matter to be allowed before two justices, or one at the least within the said county, &c." Some editors of the statute read differently the section which I have quoted; for "to" they read "or," as if resort to the justices were an alternate remedy. But the generally accepted reading, borne out by the statute itself, is that which I have given. The question was considered by the judges in 1633, and their answer is clear:—"If a woman being with child," say the judges in their resolution, "procure herself to be retained with a master who knoweth nothing thereof, this is a good cause to discharge her from her service. And if she be gotten with child during her service, it is all one. But the master in neither case must turn away such a servant of his own

authority. But if her term be ended, or she lawfully discharged, the master is not bound to provide for her," &c. Dalton's Justice, p. 165.

The law was so understood in 1773. Lord Mansfield in *Temple v. Prescott*, Cald. 14, n.—an action by a wet nurse who was discharged by her mistress—ruled that frequent acts of insolence to her mistress and fits of passion did not warrant her discharge. "No person," he said, "can be judge in his own cause; and this first principle could not be meant to be overturned by any law or usage whatsoever." He refused to receive evidence of usage, now well recognised, to dismiss domestic servants on payment of a month's wages. See also *Rex v. Tardebiggy*, Sayer, 100 (1753). In 1777 Lord Mansfield and Willes, J., in *Rex v. Brampton*, Cald. 41, had to consider the same point. Relying mainly upon a dictum in Viner's Abridgment, title Removal, p. 459, which does not bear out Lord Mansfield's statement, they ruled that a master was entitled to turn away a maidservant who was with child. "Shall the master," asked Lord Mansfield, "be bound to keep her in his house? To do so would be *contra bonos mores*, and in a family where there are young persons both scandalous and dangerous." This decision was put by Willes, J., on the ground that the justices had no jurisdiction in case of domestic servants. See *Rex v. Wilford*, Cald. 56. To show how the law was understood till some time after *Rex v. Brampton*, I may refer to Mr. Bird's book on the "Law of Master and Servant," the first edition of which was published in the end of last century. In the third edition, published in 1801, he cites at p. 3 *Rex v. Brampton*, to show that notwithstanding the statute of Elizabeth, if a servant be guilty of incontinence or other moral offence whilst in his master's service, the master may discharge him without application to a justice. But Mr. Bird adds, "neither for rudeness or other misbehaviour of servant, can the master discharge him, before the end of his term, nor can the servant leave his master on account of ill-treatment by the master or mistress; but in these and like cases, application must be made to a justice for a discharge as directed by the statute of Elizabeth." See remarks of Lord Kenyon in *Rex v. Huleot* (1796), 6 T. R. 587, and *Rex v. Sutton* (1791), 5 T. R. 659.

Sections 5, 6 and 9 of the statute of Elizabeth are mentioned by Mr. Crabb in his Digest of Statutes as being in force in 1844; they do not seem to have been repealed until 1875. See Chitty's General Practice (edition of 1837), p. 76. I do not find any clear assertion of the principle, now universally admitted, that a master may for disobedience, &c., discharge any servant, until 1817, when Lord Ellenborough at Nisi Prius, in *Spain v. Arnott*, 2 Starkie, 256—a case of a servant in husbandry—said, "He (the master) might have obtained relief by applying to a magistrate; but he was not bound to pursue that course; the relation between master and servant, and the laws by which that relation is regulated existed long before the statute." These words seem directly contrary to the express terms of the 5th section.

2. At common law a person is not entitled to treat a contract as at an end for every breach, but only when there is a breach which goes to the root of the matter and which cannot be properly compensated for: *Simpson v. Crippin* (1873), L. R. 8 Q. B. 14. When a singer who had engaged with defendant to sing for fifteen weeks, and who had agreed that he would be ready for rehearsals six days before the engagement commenced, failed to attend these rehearsals, it was held that the defendant was not entitled to refuse to take the plaintiff into his service: *Bettini v. Gye* (1876), 1 Q. B. D. 183.

No doubt failure or refusal on a single occasion to do what one was bound to do under a contract of personal service—as in *Poussard v. Spiers* (1876), 1 Q. B. D. 410, which was a case of failure on the part of a leading singer to join in the opening performance of a new opera—might go to the root of the contract and justify rescission. But apart from the decisions which are quoted in the text, it might not have occurred to anyone that refusal by a maidservant to answer a bell, or by a clerk to fetch a book on a single occasion, would justify instant dismissal and forfeiture of wages: *Gould v. Webb* (1855), 4 E. & B. 933.

CHAPTER XIX.

RIGHTS OF THE PARTIES AGAINST THIRD PERSONS.

MASTERS may recover damages against persons who wrongfully deprive them of the services of their servants or apprentices: and both parties have a cause of action against third persons for "maliciously procuring a breach of the contract of employment."

The rights of masters and servants arise out of contract. It might therefore be supposed that they would consist merely of rights *in personam* and not of rights *ad rem*. This, however, is not entirely the case. The relation is, in some respects, status. The master's rights to the labour of his servants are regarded as rights *ad rem*; they are somewhat of the nature of property.

Such a right of action as that which is above stated existed from early times. According to Bracton (*a*), the master might bring an action for insult and disgrace inflicted upon his servant, apparently though he had not lost service (*b*). Actual bodily injury was not necessary to sustain such an action; mere intimidation or menaces were enough, as appears by 20 Hen. VII. f. 5 (*c*).

The rule clearly recognised nowadays is, that the master may recover damages from persons who have wrongfully injured his servants, provided a loss of service is thereby caused.

Thus actions have been brought by masters against persons for negligently driving over a servant (*d*), administering injurious drugs to him (*e*), or for injuries from the bite of a dog (*f*).

(*a*) Bracton, 115 and 155. See Bigelow on *Torts* (2nd ed.), 180; Pollock on *Torts* (7th ed.), 230.

(*b*) The rule was different in Britton's time: Nicholl's Britton, i. p. 131.

(*c*) See also Pulton *de Pace Regis*, 3, 4. It may be noted that according to Pulton, the master's remedy for menaces to his servant extended to a "servant, tenant,

or any other person by whom he liveth or receiveth benefit." See Pollock, *Law of Torts* (7th ed.), 230.

(*d*) *Martinez v. Gerber* (1841), 3 M. & G. 88.

(*e*) Bacon's Abridgment, Master and Servant, O.

(*f*) *Hodsoll v. Stallebrass* (1840), 11 A. & E. 301.

Common instances of such actions are those which are brought against persons who knowingly entice away or procure the departure of servants (*g*). To sustain such an action, it is not necessary to prove any binding contract of service (*h*); it will be enough for the plaintiff to show that he was actually receiving the benefit of certain services at the time at which the injury of which he complains was committed, and that the defendant was aware of this fact. In *Lumley v. Gye* (*i*), it was held that an action might be brought by one theatre manager against another for procuring a prima donna to break her engagement to sing at the theatre of the former. In short, the action lies when the relation of master and servant does not in the strictest sense exist.

The cause of action known as "maliciously procuring breach of contract" has been lately much considered. It has long existed in English law, and many instances of it are to be found in the Year Books and the early reports (*k*). Such actions were, at first, always raised in connection with contracts of service, strictly so called (*l*). In 1853 the case of *Lumley v. Gye* (*m*) extended the action to the case of a contract of exclusive employment between a singer and the lessee of a theatre; the principle of the decision being that "the procurement of the violation of the right is a cause of action" (*n*). *Bowen v. Hall* (*o*), in which the contract

(*g*) See *Hall v. Hollander* (1825), 1 B. & C. 660; *Lewis v. Fogg* (1732), 2 Str. 944; *Foxes v. Wilson* (1791), Peake, 78. The Scotch Courts have held that a master is entitled to damages from one who induces a servant to reveal the secrets of his master's trade: *Fraser*, 314.

(*h*) *Evans v. Walton* (1867), L. R. 2 C. P. 615; *Lumley v. Gye* (1853), 2 E. & B. 216; *Bowen v. Hall* (1881), L. R. 6 Q. B. 333. Trespass will lie for enticing away a journeyman: *Hart v. Eldridge* (1774), Cowp. 54; although only hired by the piece and not for any certain time. Trespass will not lie for inducing a servant to leave at the expiration of the period for which he was engaged, although he had no intention at the time of leaving: *Nichol v. Martin* (1799), 2 Esp. 731. As to evidence of enticing away, *Krane v. Boycott* (1795), 2 H. B. 512.

(*i*) See note (*h*); *De Francesco v. Barnum* (1891), 63 L. T. (N. S.) 514 (Action for continuing to employ after notice.)

(*k*) Y. B. Mich. xi. Hen. IV. f. 23, A., pl. 46. See the judgment of Coleridge,

J., in *Lumley v. Gye* (1853), 2 E. & B. 216, 255 *et seq.*, and the cases there quoted.

(*l*) Excluding for the moment cases of the disturbance of rights by means of breaches of contract. The cases cited by Crompton, J., in *Lumley v. Gye*, *l. c.* at p. 228, are only used to rebut the suggestion that the cause of action was limited to cases of menial service. Perhaps *Shepherd v. Wakeman* (1 Sid. 79) is an exception, though it may be considered a case of defamation, the loss of marriage being evidence of special damage. See the argument of Willes in *Lumley v. Gye*, *l. c.* at p. 221, and the opinion of Cave, J., in *Allen v. Flood*, [1898] A. C. 1, at p. 35. *Wansmore v. Greenbank* (Willes, 577) really turns on the rights of property in a wife available against the world.

(*m*) (1853), 2 E. & B. 216.

(*n*) Per Erle, J., *l. c.* at p. 232. And see the judgment of Lord Herschell in *Allen v. Flood*, [1898] A. C. at p. 121 *et seq.*, and of Lord Macnaghten, *ibid.*, at p. 154, and the opinion of Wright, J., *ibid.*, p. 62.

(*o*) (1881), 6 Q. B. D. 333.

under consideration was also one of exclusive personal service, is the source of the doctrine that "malice" is the gist of the action in these cases; malice making the defendant's procurement wrongful and, in combination with damage, actionable. "Malice" is there (*p*) explained by Brett, L. J., to be "the indirect purpose of injuring the plaintiff (*q*), or of benefiting the defendant at the expense of the plaintiff"—a definition which would include almost every motive influencing rivals in trade. *Temperton v. Russell* (*r*) re-affirmed the doctrine of *Bowen v. Hall* (*s*) as to "malice," extended the principle to all contracts—an extension now recognised and accepted—and expressly laid it down that a malicious conspiracy to induce persons not to enter into contracts with the plaintiff was actionable, not only on the grounds of the conspiracy, but because it was "rather a fine distinction to draw, viz., that between such a case and a case where there was a subsisting contract" (*t*). In *Flood v. Jackson* (*u*) there was no subsisting contract: the plaintiffs complained that the defendant had maliciously procured their employers not to renew a contract of employment with them, which, though terminated, would but for the defendant's conduct have been in the ordinary course renewed. Kennedy, J., at the trial, and the Court of Appeal (*u*), held, in accordance with *Temperton v. Russell* (*r*), that there was a good cause of action. That decision was reversed by the House of Lords (*r*). The result of this decision by the House of Lords is apparently—

Firstly, as to "malice," to reject the doctrine of *Bowen v. Hall* (*s*) and *Temperton v. Russell* (*r*); motive is immaterial; a lawful act never becomes, simply by reason of a bad motive, actionable:

Secondly (and arising out of the first proposition), that the gist of this cause of action is the "wrong" (*injuria*), whether that "wrong" consist in the breach of contract procured or the unlawful means, *e.g.*, intimidation, threats, &c., employed to procure it; both of which elements, their Lordships found, were entirely absent from this case.

With regard to "malice," the definition given was "a wrongful

(*p*) *l. c.* at p. 338.

(*q*) Which is explained by the same judge, in *Temperton v. Russell*, [1893] 1 Q. B. at p. 725, to mean "a desire to injure him in his business in order to force him not to do what he had a perfect right to do."

(*r*) [1893] 1 Q. B. 715.

(*s*) (1881), 6 Q. B. D. 333.

(*t*) *l. c.* per Esher, M. R., at p. 728.

"Strikes" and combinations to procure breaches of contract are discussed in pt. ii. at pp. 569 *et seq.*

(*u*) [1895] 2 Q. B. 21.

(*r*) [1898] A. C. 1, under the name of *Allen v. Flood*. The majority of the Queen's Bench judges consulted were in favour of the respondents.

act intentionally done without just cause or excuse" (x). That definition was, in effect, adopted by Lord Macnaghten in *Quinn v. Leatham* (y), where he says:—" . . . a violation of legal right committed knowingly is a cause of action, and . . . it is a violation of legal right to interfere with contractual relations recognised by law, if there be no sufficient justification for the interference " ; and it has been acted upon in several recent cases.

In *Read v. Friendly Society of Operative Stonemasons*, &c. (z), the plaintiff complained of the procurement by the defendants of a breach of his contract of apprenticeship with third parties: the defendants put forward their contractual rights against those third parties under the rules of a trade union to which they both belonged, or a *bonâ fide* belief in those rights, as an excuse for their conduct. The Court of Appeal (z), upholding the Divisional Court (z), held that the evidence disclosed no just cause or excuse for their action. So in *Glamorgan Coal Co. v. South Wales Miners' Federation* (a), the decisive question was:—Had the defendants justification for procuring breaches of contracts between the plaintiffs and their workmen? Bigham, J., found as a fact that the defendants had no desire to injure the plaintiffs, and that they did nothing more than give the workmen honest and *bonâ fide* advice as to their interests, and held that these facts constituted lawful cause and excuse. In the Court of Appeal (a), Vaughan Williams, L. J., agreed with him; but Romer and Stirling, L. JJ., took a different view of the facts. They held that there had been more than advice, and that the breaches of contract had been ordered and procured by the defendants. Romer, L. J., also laid it down that just cause and excuse is not, in the case of a contract of master and servant, constituted by the absence of evil intention on the part of the defendants towards the plaintiffs *per se*, or by either the fact or the honest belief on the part of the defendants that it is for the common good of the defendants and the servants who break their contracts that the contracts should be broken. This view was upheld by the House of Lords (b). While admitting that there may be a justification for that which in itself is an actionable wrong, the House of Lords held that such justification cannot be afforded by a duty such as was set up by the defendants in this case.

(x) Per Bayley, J., in *Bromage v. Prosser* (1825), 4 B. & C. 247, 255.

(y) [1901] A. C. 495, 510.

(z) [1902] 2 K. B. 88; (C. A.) *ibid.*,

732.

(a) [1903] 1 K. B. 118; (C. A.) [1903]

2 K. B. 545.

(b) [1905] A. C. 239.

As regards duty, the question immediately arises—duty to do what? The defendants have to justify a particular line of conduct which was wrongful, *i.e.*, aiding and abetting the men in doing what both the men and the officials knew was legally wrong. The constitution of the union may have rendered it the duty of the officials to advise the men what could be legally done to protect their own interests; but a legal duty to do what is illegal and known so to be is a contradiction in terms (*c*).

In *Giblan v. National Amalgamated Labourers' Union, &c. (d)*, it appeared that, in order to compel the plaintiff to pay some defalcations to the defendant society, of a branch of which he had once been treasurer, the officers of that society, acting in combination, threatened to “call out” the men wherever the plaintiff was employed, and so had him dismissed from his work and prevented him getting work. They and the society were held liable on the ground of “interference with the plaintiff in the exercise of his undoubted common law right to dispose of his labour according to his will.” It was treated as a case of “combination,” but Romer, L. J., in the course of his judgment, said:—

In my opinion it was not essential, in order for the plaintiff to succeed, that he should establish a combination of two or more persons to do the acts complained of. In my judgment, if a person, who by virtue of his position or influence has power to carry out his design, sets himself to the task of preventing, and succeeds in preventing, a man from obtaining or holding employment in his calling, to his injury, by reason of threats to or special influence upon the man's employers or would-be employers, and the design was to carry out some spite against the man, or had for its object to compel him to pay a debt, or any similar object, not directly connected with the acts against the man, then that person is liable to the man for the damage consequently suffered. The conduct of that person would be in my opinion such unjustifiable molestation of the man, such an improper and inexcusable interference with the man's ordinary rights of citizenship, as to make him liable in an action (*e*).

But the Trade Disputes Act, 1906, has entirely changed the law as regards actions of this character, in so far as they are

(*c*) Per Lord Lindley, *l. c.* at p. 254. See per Lord Maenaghten, *ibid.*, at p. 246; also *Road v. Friendly Society of Operative Stonemasons*, [1902] 2 K. B. 732, per Collins, M. R., at p. 739.

(*d*) [1903] 2 K. B. 600.

(*e*) *l. c.* p. 619. Can this be reconciled with *Allen v. Flood* (see note (*r*))? It is submitted not. Whatever view be taken of Allen's conduct in that case, it seems clear that he “set himself to the task of preventing, and succeeded in

preventing,” the respondents “from holding employment in their calling, to their injury, by reason of special influence upon their employers”; the “spite” was assumed; the indirect object was proved; and it cannot matter that Allen had not, in fact, “the power to carry out his design,” since it was, according to the evidence, the impression that he had such power which obtained the discharge of the respondents.

connected with "trade disputes," and has made actions against trade unions for their own or their agents' torts unmaintainable (*f*). As to "discovery" in an action for conspiracy to induce breach of contract, see *National Association of Operative Plasterers v. Smithies* (*g*).

The Courts have extended the action for loss of service to the case of children who are injured, a child being constructively in the service of its parent. There must, however, be some foundation for the theory. A father will not be able to recover damages if his child be incapable by reason of youth, as in *Hall v. Hollander* (*h*), of rendering services.

This remedy has been used by a sort of fiction for the purpose of punishing seducers of women. The action is based upon loss of service, and is said to be maintainable only when the relation of master and servant exists (*i*). But in order to apply the remedy, the Courts have been inclined to find that relation, when in point of fact it does not exist. Proofs of trivial acts have been accepted as evidence of service. It is enough that there is a service at will. The fact that a daughter, as in *Rist v. Faur* (*k*), assisted in household work after coming home in the evening from the fields, where she worked for hire, has been held sufficient. The length to which the Courts have gone is seen by *Evans v. Walton* (*l*), which was an action for enticing away the plaintiff's daughter. She resided with her father and assisted him in his business as a licensed victualler, but she was free to leave at any time. Having quitted home with her mother's consent, she was seduced. The Court thought that, as she had been induced to quit a continuing service, an action was maintainable. But in *Whitbourne v. Williams* (*m*), it was held that there was no evidence of service to support the action on these facts:—The plaintiff's daughter, being in the defendant's service both before and after the seduction, went home

(*f*) See the Act in question and the notes thereon, pt. ii, *infra*.

(*g*) [1906] A. C. 431.

(*h*) (1825), 4 B. & C. 660.

(*i*) *Fores v. Wilson* (1791), Peake, N. P. 77; *Grinnell v. Wells* (1841), 7 M. & G. 1033; *Davies v. Williams* (1847), 10 Q. B. 725; *Thompson v. Ross* (1859), 5 H. & N. 16.

(*k*) (1863), 4 B. & S. 409; *Griffiths v. Tredgen* (1854), 15 C. B. 344; but see *Dean v. Peel* (1804), 5 East, 45; and *Hedges v. Tagg* (1872), L. R. 7 Ex. 283; (Plaintiff's daughter, a governess, seduced while on a three days' visit with her employer's permission at her

mother's home; she gave some assistance in household work during her visit; at time of her confinement she was in service of another employer, and afterwards returned home to her mother; no action because no evidence of service at the time of seduction; and by Kelly, C. B., Martin, Bramwell, BB., because confinement did not take place while daughter in plaintiff's service.) *Blaymire v. Halsey* (1840), 6 M. & W. 55. But see *Long v. Keightley* (1877), 11 Ir. C. L. 221; and Roscoe on Evidence (17th ed.), 895.

(*l*) (1867), L. R. 2 C. P. 615.

(*m*) [1901] 2 K. B. 722.

once a week for an afternoon and evening and assisted in household duties (*mm*).

On the other hand, no action will lie for enticing away an apprentice if there exist no valid contract of apprenticeship. In a case in which an indenture was void by reason of the 8th of Ann. c. 9, ss. 35 and 39, for not truly and fully setting forth the consideration or premium paid, the Court of Common Pleas held that a count for enticing away could not be sustained (*n*); a decision which seems difficult to reconcile with the reasoning in cases as to the enticing away of workmen.

An action will lie, not only against one who wrongfully seduces or entices away a servant or apprentice, but against one who knowingly receives or harbours the servant or apprentice of another (*o*). But there is an important distinction between the two kinds of action.

The action for enticing away or seduction may be maintained, as has been stated, when no binding contract of service exists, when service *ex gratia* or *de facto* is suspended in consequence of the persuasion or procurement of the defendant.

The action for receiving or harbouring the servant of another will, for obvious reasons, not be sustainable unless there be a binding and enforceable contract. Accordingly, when A. took into his service C., who was working for B., under a contract bad by reason of the Statute of Frauds, and refused to discharge C. after receiving notice from B., it was held that no action lay against A. (*p*). To sustain an action for harbouring, it is necessary to prove that the defendant knew of the service (*q*) or apprenticeship, and that there should be proof of some damage. Though there be no binding contract in operation at the time of the enticement, an action will lie for continuing to employ after notice of such a contract (*r*).

(*mm*) The plaintiff is usually the father or mother; but the action has been brought by a master who was no relation, *Fores v. Wilson* (1791), Peake, N. P. 77; by an aunt, *Edmondson v. Machell* (1787), 2 T. R. 4; by a father by adoption, *Irwini v. Dearman* (1809), 11 East, 23. This right of action does not pass to the plaintiff's trustee in bankruptcy: *Howard v. Crowther* (1841), 8 M. & W. 601.

(*n*) *Cox v. Miniey* (1859), 6 C. B. N. S. 375; but see the remarks of Bovill, C. J., in *Evans v. Walton* (1867), L. R. 2 C. P. 615, 618 (*arguendo*), 619.

(*o*) *Blake v. Lanyon* (1795), 6 T. R. 221; *Ashcroft v. Bertles* (1796), 6 T. R. 652.

(*p*) *Sykes v. Dixon* (1839), 9 A. & E. 693; *Pilkington v. Scott* (1846), 15 M. & W. 657; *De Francesco v. Barnum* (1890), 45 Ch. D. 430: (no action for enticing an apprentice will lie where the provisions of the deed are unreasonable, and therefore unenforceable). See *Forbes v. Cochran* (1824), 2 B. & C. 448.

(*q*) *Fawcett v. Beavres* (1671), 2 Lev. 63; *Fosset v. Bree* (1671), 3 Keb. 59; *Fores v. Wilson* (1791), Peake, 77. (No notice necessary in case of action of seduction.)

(*r*) *De Francesco v. Barnum* (1891), 63 L. T. (N. S.) 514; see *R. v. Edwards* (1798), 7 T. R. 745; *Eades v. Vandeput*, 5 East, 39, note (*a*); (cases of impressment of apprentices).

A master cannot, by writ of *habeas corpus*, obtain possession of an apprentice in the service of another, unless the apprentice is detained against his will (s).

“If an infant of seven or eight years of age covenant with me to serve, he may depart when he pleases; but if such an infant serve me voluntarily, or by agreement, and a stranger take him from me, or beat him, I shall have a remedy” (t).

If the injuries wrongfully inflicted upon a servant cause his immediate death, the master has no right of action.

The reason of this qualification is very obscure. It was quaintly said by Tanfield, J., in *Higgins v. Butcher* (u), “That the servant dying of the extremity of a battery, it is now become an offence to the Crown, being converted into a felony, and that drowns the particular offence and private wrong offered to the master before, and his action is thereby lost.” There are several objections to this explanation, which was a dictum not essential to the decision of the case. One of these is the fact that *White v. Spettigue* (x), followed in this respect by *Osborne v. Gillett* (y), has decided that the rule as to a right of action being suspended in case of felony applies only between the person injured and the criminal; it does not affect a third party, such as the master. According to another explanation, “The master’s right to his servant’s services is instantly abrogated, and, in the eye of the law, no damage is sustained by him because no right” (z). This reason explains nothing. Does not a right of action accrue to the master between the moment when the injury was inflicted or the wrong done, and the moment when death took place? And, if it does accrue, what becomes of it? (a). Probably the rule originated in a mistake as to the meaning of the maxim *Actio personalis moritur cum persona*. The existence of the rule has been disputed by some American

(s) *R. v. Reynolds* (1795), 6 T. R. 497; *Ex parte Gill* (1806), 7 East, 376.

(t) Y. B. 21 Hen. VI. 9.

(u) (1606), Yelv. 90.

(x) (1845), 13 M. & W. 603.

(y) (1873), L. R. 8 Ex. 88; *Appleby v. Franklin* (1885), 17 Q. B. D. 93.

(z) Even in *Osborne v. Gillett* the rule seems to have been misunderstood.

(a) Nevertheless, it is the explanation which Sir Gorell Barnes, P., inclines to accept in *Clark v. London General Omnibus Co.*, [1906] 2 K. B. 648, 662, on the strength of a passage in the judgment of Gwynne, J., in *Monaghan v. Horn* (1882), 7 Canada Sup. Court R. 409. The passage referred to is set out in the argument in *Clark’s Case*, *ubi supra*, at p. 653.

Courts (*b*). Whatever be its origin, it is in force. It was stated in *Higgins v. Butcher* (*c*), and it was affirmed by Lord Ellenborough at *nisi prius* in *Baker v. Bolton* (*d*), decided in 1808. It has found its way into text books (*e*); it was recognised by the Court of Exchequer (Bramwell, B., dissenting) in 1873 in *Osborne v. Gillett* (*e*); and it has recently been re-affirmed by the Court of Appeal in *Clark v. London General Omnibus Co., Ltd.* (*f*), where the claim was by a father for damages for loss of service and funeral expenses arising out of the almost instantaneous death of his daughter caused by the defendants' negligence.

There are cases in which the facts may be viewed as constituting a cause of action either in contract or in tort; and a master's or servant's rights of action may depend upon the view taken. In *Marshall v. York, Newcastle and Berwick Rail. Co.* (*g*) the plaintiff, a servant, and his luggage were being carried by the defendants on their railway, the master paying the fare. The luggage was lost on the journey; the plaintiff was held entitled to sue the defendants for their negligence, independently of the contract of carriage. *Alton v. Midland Rail. Co.* (*h*) seemed to decide that where a servant was travelling, having paid his own fare, and was injured by the defendants' negligence, the master could not recover damages for loss of service, inasmuch as the action lay in contract and the master was a stranger to the contract. But this decision must, in view of recent criticism, be regarded as very doubtful, particularly when it is remembered what the effect of the Judicature Acts has been upon all arguments founded upon the form of pleadings (*i*). It is commented on in *Taylor v. Manchester, Sheffield and Lincolnshire Rail. Co.* (*k*) and *Mene v. Great Eastern Rail. Co.* (*l*). In the latter case the plaintiff sued for the value of her footman's livery, which had been destroyed by the negligence of the defendants' servants while in their custody for the purpose of safe carriage. The defendants had received the portmanteau containing the livery from the footman, who was travelling with it, and had taken a ticket as a passenger on their line. The defendants argued

(*b*) Wood, 438.

(*c*) (1606), Yelv. 90.

(*d*) (1808), 1 Camp. 493.

(*e*) The whole subject is discussed in *Ex parte Ball* (1879), 10 Ch. D. 667; and in *Midland Insurance Co. v. Smith* (1882), 6 Q. B. D. 651. See Pollock's *Law of Torts* (8th ed.), p. 64.

(*f*) [1906] 2 K. B. 648. There was also a claim for funeral expenses under Lord Campbell's Act, which was re-

jected: see pt. ii. p. 645.

(*g*) (1851), 11 C. B. N. S. 655.

(*h*) (1865), 19 C. B. N. S. 213.

(*i*) Pollock's *Law of Torts* (8th ed.), 544—546; Beven's *Negligence in Law* (2nd ed.), vol. i. p. 211, note 3.

(*k*) [1895] 1 Q. B. 134, as explained in *Kelly v. Metropolitan Rail. Co.*, [1895] 1 Q. B. 944.

(*l*) [1895] 2 Q. B. 387.

that the foundation of the claim was the contract of carriage, and that, the contract being between the footman and the company, the plaintiff could not sue; but the Court of Appeal held that she had a good claim in tort, to maintain which she only had to show that the property damaged by the defendants' misfeasance was lawfully on the defendants' premises.

The only answer is that *Alton v. Midland Rail. Co.* has decided otherwise; but this is not so. . . . When [that] case is looked into, it appears that the sole point which was decided was on demurrer, which raised the question, whether, the servant having contracted with the railway company to be safely and securely conveyed, the master could take advantage of that contract and sue for breach of it. That case is no authority for the proposition that the plaintiff cannot sue in tort irrespective of contract (*m*).

The judge at the trial seems to have thought that the portmanteau was not lawfully on the defendants' premises, because it was accepted as the servant's personal luggage, whereas it was really the plaintiff's; and the defendants relied upon *Becher v. Great Eastern Rail. Co.* (*n*), which decided that a master could not maintain an action for the loss of his portmanteau, which was accepted by the defendants as a servant's personal luggage. But the Court of Appeal thought otherwise; and Kay, L. J., protests against the idea that "when the company make no inquiry as to what is in the portmanteau, but accept it as personal luggage, they should be able to turn round and say, 'The goods were not yours'"; but it was not necessary to go that length, because the Court held that the fact of the property being a livery was enough to make it at once the personal luggage of the servant and the property of his mistress. There is no doubt that *Becher v. Great Eastern Rail. Co.* (*n*) will have to be reconsidered.

Where a servant had been injured by a collision caused by the negligence of another company than that with which the contract of carriage was made, the master recovered damages for loss of service (*o*).

(*m*) Per A. L. Smith, L. J., *l. c.* at p. 394.

(*n*) (1870), L. R. 5 Q. B. 241.

(*o*) *Berringer v. Great Eastern Rail. Co.* (1879), 4 C. P. D. 163. See *Ames v. Union Rail. Co.* (1875), 19 Am. Rep. 426.

APPENDIX.

The following are the chief cases as to actions of seduction :—

ACTION.

Bennett v. Allcott (1787), 2 T. R. 166 (person seduced of full age); *Edmondson v. Machell* (1787), 2 T. R. 4; *Fores v. Wilson* (1791), Peake, 77 (servant not related to her master); *Mann v. Barrett* (1806), 6 Esp. 32 (plaintiff's daughter lived with her brother, but went every day to her father's house to do all the household work); *Speight v. Oliveira* (1819), 2 Stark. 493; *Manrell v. Thompson* (1826), 2 C. & P. 303 (plaintiff's niece entitled on coming of age to 500*l.*; occasionally assisted in the household work); *Harper v. Luffkin* (1827), 7 B. & C. 387 (married woman living with her father and acting as servant); *Maunder v. Venn* (1829), M. & M. 323 (no proof of acts of service, but father had right to daughter's services. Littledale, J.); *Holloway v. Abell* (1836), 7 C. & P. 528 (A. occupied two farms seven miles apart; A. resided at one, and his son and daughter at another; the daughter acted as mistress at the latter farmhouse; the daughter seduced; action lay. Littledale, J.); *Griffiths v. Tvetgen* (1854), 15 C. B. 344 (A. agreed with B. that B.'s daughter, who was then residing with him, should enter A.'s service to assist him in business during the temporary absence of A.'s wife; action lay at suit of B. for seduction by A. during that period); *Rist v. Faux* (1863), 32 L. J. Q. B. 386 (plaintiff's daughter after day's work as servant in husbandry performed services for her father); *Ogden v. Lancashire* (1866), 15 W. R. 158 (plaintiff's daughter lived with her father; worked during day at defendant's mill; did washing and other domestic duties for plaintiff);

NO ACTION.

Saterthwaite v. Duerst (1785), 5 East, 47, n.; *Reddie v. Scoolt* (1795), Peake, 316 (plaintiff permitted a man whom he knew to be married to visit his daughter as suitor); *Dean v. Peel* (1804), 5 East, 45 (plaintiff's daughter in service of another at time of seduction, and did not intend to return to plaintiff's house); *Carr v. Clarke* (1818), 2 Chit. 261 (no action when daughter not in father's service, but he receives part of her wages); *Harris v. Butler* (1837), 2 M. & W. 539 (plaintiff's daughter apprenticed to defendant's wife); *Blaymire v. Huley* (1840), 6 M. & W. 55 (action does not lie where daughter in domestic service of another, though she was there with the intention on her and her father's part to return, on quitting her present situation, to her father's house if she got no other situation); *Grinnell v. Wells* (1844), 7 M. & G. 1033 (some proof of loss of service necessary); *Eager v. Grimwood* (1847), 1 Ex. 61 (some proof of loss of services necessary); *Davies v. Williams* (1847), 10 Q. B. 725 (plaintiff's daughter when seduced not in plaintiff's service); *Thompson v. Ross* (1858), 5 H. & N. 16 (no action where daughter does not reside in house, though, with permission of her master, she has been in the habit of assisting her mother in her business); *Mandey v. Field* (1859), 7 C. B. N. S. 96 (plaintiff's daughter had a house of her own); *Heelges v. Tagg* (1872), L. R. 7 Ex. 283; *Whitbourne v. Williams*, [1901] 2 K. B. 722.

ACTION.

Terry v. Hutchinson, L. R. (1868), 3 Q. B. 599 (plaintiff's daughter having left her situation was seduced on her way home to her father's house).

Long v. Knightley (1877), 11 Ir. C. L. 221. (Plaintiff's daughter, twenty-four years of age, seduced in the house, and while in the service of, plaintiff her mother. In accordance with a previous arrangement, she left the day afterwards for America; finding herself pregnant, she went to her sister's house, and resided there until after her confinement; subsequently she returned to the plaintiff's house. Evidence to go to jury of loss of service.)

CHAPTER XX.

DISSOLUTION OF THE CONTRACT OF HIRING AND SERVICE.

(By Death.)

CONTRACTS of hiring and service and apprenticeship are terminated by the death of the master or the servant or apprentice.

The general rule is that executors or administrators are liable upon the contracts of the deceased, though they are not named (*a*). It is, however, an implied condition in contracts of service, requiring personal skill or taste, that they are terminated by death, though, of course, the servant's executors are entitled to the wages due at the time of the servant's death.

Where personal considerations are the foundation of the contract, as in cases of principal and agent, and master and servant, the death of either of the parties puts an end to the relation; and, in respect of service after death, the contract is dissolved, unless there be a stipulation, express or implied, to the contrary (*b*).

"All contracts for personal service," said Pollock, C. B., in *Hall v. Wright* (*c*)—and the dictum is quoted with approval by Kelly, C. B., in *Robinson v. Davison* (*d*)—"which can be performed only during the lifetime of the party contracting, are subject to the implied condition that he shall be alive to perform them." Hence a contract of apprenticeship (*e*) has been held to be determined by the death of one of the parties.

(*a*) Parke, B., in *Saboni v. Kirkman* (1836), 1 M. & W. 423; Willes, J., in *Farrow v. Wilson*. See next note.

(*b*) *Farrow v. Wilson* (1869), L. R. 4 C. P. 744, 746. (Farm bailiff engaged at weekly wages; service to be determinable by six months' notice, or payment of six months' wages. Administratrix not bound to continue the bailiff in her employment, or to pay him six months' wages after the master's death.) *Barker v. Parker* (1786), 1 T. R. 287. But see *Stubbs v. Holywell Rail.*

Co. (1867), L. R. 2 Ex. 311. Marriage does not operate as a dissolution of contract. Chitty's *General Practice*, vol. i. 770; *Burn's Justice*, 222.

(*c*) (1859), E. B. & E. 746, 793.

(*d*) (1871), L. R. 6 Ex. 269, 274. See Blackburn, J., in *Taylor v. Caldwell* (1863), 3 B. & S. 826, 833.

(*e*) *Pett v. Wingfield* (1692), Carth. 231; *R. v. Pell* (1698), 1 Salk. 66; *Baxter v. Burfield* (1747), 2 Stra. 1266; *R. v. Chirk* (1774), Bur. S. S. 782.

No doubt such a contract may be drawn so as to prevent this taking place. In *Cooper v. Simmonds* (*f*), a lad was bound to a tradesman and "his executors" carrying on the same business in the same town. Notwithstanding the death of the master the apprentice was bound to serve his widow, the executrix, while she continued the same business. But the executors of the master remain liable to the extent of their assets upon the covenant to maintain (*g*).

The chief difficulty is with respect to the servants of partners. The death of a partner dissolves a partnership in the absence of an agreement to the contrary (*h*); and if the rule be, as is sometimes alleged, that the dissolution of partnership terminates all contracts of hiring and service (*i*), the death of one partner would bring this about. This view is supported by *Tasker v. Shepherd* (*k*). The plaintiff was employed as agent by a firm composed of two partners. The Court held that the death of one of them terminated the relation of agency. But this view was questioned by Martin, B., in *Tasker v. Shepherd* and in *Hobson v. Cowley* (*l*). There may seem some reasons against it where a change in the partnership involves no change in the duties of the servant; and it may be urged that the decision in *Tasker v. Shepherd* turned on the construction of the particular contract before the Court, which was made with reference to partnership business, and contained a proviso that the servant should be paid according to the profits

(*f*) (1862), 7 H. & N. 707.

(*g*) *Wadsworth v. Gye*, Sid. 216. And see the first two cases in note (*c*). This proposition is recited in the preamble to 32 Geo. III. c. 57. See Austin on *Apprentices*, pp. 40–42.

(*h*) Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 33.

(*i*) Wood, 308.

(*k*) (1861), 6 H. & N. 575. See also *Rawlinson v. Moss* (1861), 30 L. J. Ch. 797. (Dissolution of partnership of solicitors amounts to a discharge of client.)

(*l*) (1858), 27 L. J. Ex. 205, 208. (Plaintiff agreed with defendants, C. and M., to serve for seven years; L. came into the firm in place of M.; plaintiff signed a memorandum, which stated "that, in consideration that a new agreement is entered into with the new firm, he was willing to cancel the old agreement": held, evidence of exoneration, even if dissolution of partnership was a breach of contract.) *Dobbin v. Foster* (1844), 1 C. & K. 323.

(A., B. and C., partners. D. engaged to serve them as foreman for twelve years; C. quitted the business, and D. continued to serve A. and B. D. sued A., B. and C. on the original agreement: Coltman, J., ruled "C.'s going out of the concern did not *per se* put an end to the agreement. D. entitled to sue A., B. and C.") See also *Hoey v. McEwan* (1867), 5 Macph. 814 (Agreement between a firm and their clerk; the clerk engaged for five years, at a salary of 300*l.* a year, and percentage of profits; the firm dissolved by death of one of the partners: held, *inter alia*, that the contract of service, being personal, was determined.) See *R. v. St. Martins* (1835), 2 A. & E. 655, and the cases in which bonds are given by sureties to partners for good conduct of clerks and servants. The surety is discharged when a change by death or otherwise occurs in the partnership: *Chancellor of the University of Cambridge v. Baldwin* (1839), 5 M. & W. 581; *Simson v. Cooke* (1824), 1 Bing. 452; Addison on *Contracts* (10th ed.), p. 1009.

of the firm. But, on principle, it seems clear that a contract in which A. contracted to serve B. and C. would not be binding between A. and C. only. This view was taken by the majority of the Court of Appeal in *Brace v. Calder* (*m*), where it was held that a dissolution of partnership by the retirement of two of the partners operated as a wrongful dismissal of the plaintiff. But in *Phillips v. Athambra Palace Co.* (*n*), a contract of employment for music-hall performances was enforced by the performers against two out of the three original contracting partners, one having died; on the ground that the contract had not been made with special reference to the personnel of the partners, or to the character of the partnership business as then carried on. *Tusker v. Shepherd* is there explained on this latter ground.

There are few authorities with regard to the question whether, if a master "assumes partners" they will have the rights and liabilities of masters in relation to servants. The law upon the subject is thus stated in Fraser's *Law of Master and Servant* (*o*):—

He (a partner) cannot assume partners who will have the right of masters over domestic servants, governesses, or perhaps over clerks. It is part of such agreements that the servant shall do the work of the master who hires him, and of him alone. With regard, however, to artisans, it has been found that they cannot consider themselves free, although their master assume a partner along with himself, who will have the rights of a master. This is a contingency to be looked for and expected; and it would often be productive of ruinous consequences, if, on such a common event, the whole servants of a large establishment were freed from their contracts. This was decided in a case where a master, conducting business alone, assumed two partners. But an opinion was expressed that it would have been different if the original master had not remained in the firm (*p*).

It is submitted that in English law the question is whether there has been novation; if there was no novation, the new partner would not have the rights and liabilities of a master. This view is corroborated by sect. 17 of the Partnership Act, 1890, which provides [sub-s. (1)] that:—

A person who is admitted as a partner into an existing firm does not

(*m*) [1895] 2 Q. B. 253. Lopes, L. J., seems to accept *Tusker v. Shepherd* as authority for the proposition "that by the death of one of a firm of masters the servant is discharged, unless the contrary is stipulated by the terms of the contract"; and goes on to say that the facts in *Brace v. Calder* seem stronger than the death of a partner. Rigby, L. J., puts his decision on the ground that "a contract to serve four employers cannot,

without express language, be construed as being a contract to serve two of them." Lord Esher, M. R., dissented on the ground that the real contract was that the defendants would employ the plaintiff for the time mentioned, *if they carried on their business so long*.

(*n*) [1901] 1 Q. B. 59.

(*o*) Page 123.

(*p*) *Harkins v. Smith* (1841), 16 F. 938.

thereby become liable to the creditors of the firm for anything done before he became a partner.

There seems to be no reason for excluding contracts of service from this section; its principle has been applied to contracts of work and labour (*q*). But on proof of the fact that a new partner has allowed debts of the old partnership to form with debts subsequently contracted one open running account, any sums paid on that account by the new partnership will be appropriated to the old debts and the new partner still remain liable for the balance (*r*). The performance of service for and the acceptance of service by the new partner would, of course, be itself evidence of novation.

Dissolution of Contract by Consent.

The contract may, of course, be dissolved by consent of both parties, express or implied (*s*). No particular words are required, and consent may be implied from conduct. At common law a contract under seal, such as indentures of apprenticeship, might be dissolved by consent, unless when an interest in real property has passed. To discharge indentures something must be done equivalent to cancelling (*t*). There are many cases as to what constitutes cancellation (*u*). If the indentures are cancelled by consent of the apprentice, it must be proved that the dissolution of the contract was for his benefit (*x*). In a Scotch case, decided in 1815, an apprentice was impressed as a seaman; he remained in the navy sixteen years, and he returned home having reached the rank of lieutenant. His master made a claim for breach of contract, but the Courts thought that the fact that he had not made the claim for a number of years amounted to a tacit permission to the apprentice to consider himself released (*y*).

A master who had made no effort to reclaim an apprentice for years, would no doubt be regarded as having tacitly consented to his release.

(*q*) *Beale v. Moutts* (1847), 10 Q. B. 976.

(*r*) *Beale v. Caddick* (1857), 2 H. & N. 326. See *Lindley on Partnership* (6th ed.), pp. 214—217.

(*s*) *Rex v. Waddington* (1774), Bur. S. C. 766; *Rex v. Harberton* (1786), 1 T. R. 139; on other hand, *Rex v. Warden* (1828), 2 M. & R. 24; and *Rex v. Sheffington* (1820), 3 B. & A. 382.

(*t*) *Rex v. Langham* (1782), 1 Bott.

612; *Rex v. St. Mary Kalendar* (1748), 1 Bur. S. C. 274. See Austin on *Apprentices*, 43.

(*u*) *Rex v. Harberton* (1786), 1 T. R. 139; *Rex v. Warden* (1828), 2 M. & R. 24.

(*x*) *Rex v. Great Wigston* (1824), 3 B. & C. 484; *Rex v. Mountsorrel* (1815), 3 M. & S. 497.

(*y*) *Fraser's Master and Servant* (3rd ed.), p. 315.

Contracts of service are not avoided by enlistment in the militia, save in certain special circumstances (z).

Bankruptcy.

Bankruptcy does not operate as a dissolution of a contract of hiring and service (a).

As to the contract of apprenticeship, the Bankruptcy Act of 1883, s. 41, provides as follows:—

(1) Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articulated clerk to the bankrupt, the adjudication of bankruptcy shall, if either the bankrupt or apprentice or clerk gives notice in writing to the trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement; and if any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as the trustee, subject to an appeal to the Court, thinks reasonable, out of the bankrupt's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy, and to the other circumstances of the case.

(2) When it appears expedient to a trustee, he may, on the application of any apprentice or articulated clerk to the bankrupt, or any person acting on behalf of such apprentice or articulated clerk, instead of acting under the preceding provisions of this section, transfer the indentures of apprenticeship or articles of agreement to some other person.

As to the effect of compulsory and voluntary winding-up upon contracts of service, see p. 128, *supra*.

(z) Militia Act, 1875 (38 & 39 Vict. c. 69), s. 78.

(a) *Thomas v. Williams* (1834), 1 A. & E. 685. (Clerk hired by the year continues in bankrupt's office after bankruptcy. In the middle of year by mutual consent contract is rescinded; clerk not barred by certificate from recovering all the wages due from the expiration of

the year last before the commission up to the time of rescinding, nothing being due and proveable at the date of issuing the commission.) It is almost needless to say that the assignees of the bankrupt cannot require the fulfilment of the contract of service by a servant: *per Abinger, C. B.*, in *Gibson v. Carruthers* (1841), 8 M. & W. 321, 343.

A trustee in bankruptcy has no right to the proceeds of the personal and daily labour of a bankrupt.

The old law—and it is still in force—was that wages earned by a bankrupt before his discharge did not pass to his assignees, at all events so far as the wages were necessary to his maintenance (*b*). *Williams v. Chambers* (*c*) decided that the assignee of an insolvent debtor could not recover in respect of work and labour performed by the debtor if the remuneration were necessary for his maintenance. But if the claim were not for “mere personal labour”—if, as in *Elliot v. Clayton* (*d*), the claim were for medical attendance and medicines, or for services rendered by a furniture broker, who employed men and vans in the course of the services for which he sued (*e*)—a different rule prevailed. No doubt, too, if a person accumulated a large sum, even by personal labour, the assignees might claim it (*f*). In like manner the trustee could intervene and claim (*g*) a sum which was not the remuneration for work and labour, but damages for breach of contract; as in *Wailing v. Oliphant* (*h*), where the trustee was entitled to claim a sum awarded by the Court of Chancery to the bankrupt, after bankruptcy and before discharge, in lieu of proper notice of dismissal.

“If salary or wages, or commission under a contract of service,” says Wilde, C. J., in *Beckham v. Drake* (*i*)—in which the question was whether a sum in the nature of a penalty for breach of a contract to employ passed to the assignees of a servant—“are due at the time of the bankruptcy, the right to recover such wages, salary, or commission would pass to the assignees as part of the personal estate, without regard to the consideration of whether the contractor’s services had had relation to the personal skill or labour

(*b*) *Chippendall v. Tomlinson* (1785), 4 Doug. 318. (In this case the assignees did not interfere.) *Silk v. Osborn* (1794), 1 Esp. 139; *Ex parte Walters* (1842), 2 M. D. & D. 635; *Ex parte Grimstead* (1844), De G. 72; *In re Graydon*, [1896] 1 Q. B. 417; *In re Roberts*, [1900] 1 Q. B. 122; *Mercer v. Fans Colina*, reported in note to preceding case, *ibid.*, at p. 130; *Bailey v. Thurston*, [1903] 1 K. B., per Collins, M. R., 137, 142.

(*c*) (1847), 10 Q. B. 337.

(*d*) (1851), 16 Q. B. 581.

(*e*) *Crofton v. Poole* (1830), 1 B. & Ad. 568.

(*f*) *Hesse v. Stevenson* (1803), 3 B. & P. 578.

(*g*) See the remarks on this case in *Bailey v. Thurston*: see note (*b*).

(*h*) (1875), 1 Q. B. D. 145. See also *Beckham v. Drake* (1847), 2 H. L. C. 579; right of action for breach of agreement to hire for seven years which accrued before bankruptcy passed to assignees; and on the other hand, *Ex parte Dechurst* (1871), L. R. 7 Ch. 185.

(*i*) (1849), 2 H. L. C. 633.

of the bankrupt," &c. . . . To the argument that the action was personal to the bankrupt, Wilde, C. J., replied :—

It arose out of a contract founded on the personal confidence in the bankrupt, and which could only be performed by his personal labour and skill; and, in the same sense, contracts are personal made with factors, salesmen, agents of various kinds, masters of ships, bankers, attorneys, architects, engineers, and various other persons whose personal skill, knowledge, and integrity are the inducements to the contracts. But surely it cannot be contended that the right of action for breaches of contract in relation to such employments accruing before the bankruptcy would not pass to the assignees.

In *Emden v. Carte* (*k*), the trustee of an architect was held entitled to sue as co-plaintiff with the bankrupt for remuneration in respect of a contract to employ the bankrupt as architect, and for damages for wrongful dismissal from such employment. But unless and until the trustee intervenes, an undischarged bankrupt can maintain an action for damages for wrongful dismissal in respect of a breach, since the bankruptcy, of a contract of service made before the bankruptcy (*l*). "The circumstance that the master is likely to become bankrupt, or that his property has been all taken in execution, will not exonerate the servant from performance of his contract" (*m*).

Sect. 53, sub-sect. (2), of the Act of 1883 provides :—

Where the bankrupt is in receipt of a salary or income other than as aforesaid (officers, civil servants, &c.), or is entitled to any half-pay, pension, or to any compensation granted by the Treasury, the Court, upon the application of the trustee, shall from time to time make such order as it thinks just for the payment of such salary, income, half-pay, compensation, or of any part thereof, to the trustee, to be applied by him in such manner as the Court may direct (*n*).

This section does not apply to a purely voluntary allowance (*o*); nor to a compassionate allowance to a retired Indian officer (*p*); nor to the fluctuating income of a professional man acquired by his skill and knowledge (*q*); nor to the wages of a workman

(*k*) (1880), 17 Ch. D. 169; 17 Ch. D. 768. See remarks on this case in *Bailey v. Thurston*, *ubi supra*; also *Wadling v. Oliphant* (1875), 1 Q. B. D. 145.

(*l*) *Bailey v. Thurston & Co., Ltd.*, [1903] 1 K. B. 137.

(*m*) Wood, 307.

(*n*) See Bankruptcy Rules, 1886, r. 79, as to notice by the trustee; and r. 82, as to power to review the order.

(*o*) *Ex parte Wicks, Re Wicks* (1881), 17 Ch. D. 70.

(*p*) *Ex parte Webber, Re Webber* (1887), 18 Q. B. D. 111.

(*q*) *Ex parte Benwell, Re Hutton* (1884), 14 Q. B. D. 301.

employed in a colliery (*r*). But it does apply to a salary dependent on the annual vote of Parliament or a colonial legislature (*s*) ; to a commercial traveller's salary paid weekly under an engagement terminable at a week's notice (*t*) ; and to an actor's fixed salary payable under a contract (*u*).

The following are the modes in which a contract of service may be lawfully terminated :—

- (a) By consent.
- (b) By expiration of the agreed period of service.
- (c) By notice, including—
 - (i) payment of wages in lieu of notice.
 - (ii) expiration of the time for which notice is given.
- (d) By dismissal or departure without notice for good cause.
- (e) By impossibility of service.
- (f) By death of one of the parties.

(*r*) *Re Jones, Ex parte Lloyd*, [1891] 2 Q. B. 231.

(*s*) *Ex parte Huggins, Re Huggins* (1882), 21 Ch. D. 85.

(*t*) *Re Brindley, Ex parte Brindley* (1887), 4 Mor. 104.

(*u*) *Ex parte Shine, Re Shine*, [1892] 1 Q. B. 522.

CHAPTER XXI.

ASSIGNMENT OF PERSONAL CONTRACTS.

CONTRACTS of hiring and service cannot be transferred or assigned without the consent of the parties thereto (*a*).

Master and servant both contract with regard to the personal qualities of each other. The relation is one of personal confidence, and the one cannot compel the other to accept a third person in substitution. If A., for example, sells his business to B., he cannot turn over D., his servant, to the purchaser. Neither will a servant be permitted to say to his master, "I decline to work myself, but I have procured a competent substitute," or "I have let out a part of the work." In one case the plaintiff was employed as master of a ship; he engaged A. to act for him. In an action which the former brought for wages, it was held that he could not recover, as the contract contemplated personal service (*b*).

In like manner the contract of apprenticeship is *prima facie* not assignable (*c*). As it is expressed in *Corentry v. Woodhall*, "The matter of putting an apprentice is a matter of great trust, for his diet, for his health, for his safety; and therefore I will, by choice, commit him to one and not to another" (*d*). All the parties to the original contract must join in an assignment to make it effective (*e*). It must be properly stamped, and operates as an agreement between the master and the assignee that the apprentice shall,

(*a*) Leake's *Law of Contract*, 5th ed. 825; Pollock on *Contracts*, p. 472.

(*b*) *Campbell v. Price* (1831), 9 S. 261; *Schnatling v. Tomlinson* (1815), 6 Taunt. 147. (A. employed by defendant to carry goods to a foreign market; A. delegated the performance to plaintiff, who did the work without knowledge of the defendant; plaintiff could not recover compensation for services from defendant.) See also *Sterens v. Benning* (1854), 1 K. & J. 168; *Hole v. Bradbury* (1879), 12 Ch. D. 886 (agreements between author and publisher); *Griffith*

v. Tower Publishing Co., [1897] 1 Ch. 21, where the principle was applied to a limited company; *Robson v. Sharpe* (1831), 2 B. & A. 302. As to servant agreeing to serve master's assignee, *Benwell v. Inns* (1857), 26 L. J. Ch. 663.

(*c*) *Baxter v. Bugfield* (1747), 2 Str. 1266; *Horne v. Blake*, 2 Str. 1267. See Austin on *Apprentices*, 72.

(*d*) Hob. 134 A.

(*e*) *Baxter v. Bugfield* (see note (*c*)). Strictly this is no assignment, but a new contract.

with his own consent, perform his contract with the former by doing service to the latter (*f*). Such a contract, however, may be assignable if the master's assignees or executors are named (*g*), or if there be, as is the case in the City of London, a custom in virtue of which an apprentice may be turned over to a new master (*h*).

(*f*) *Crister v. Eccles* (1701), 1 Ld. Raym. 683. See Austin on Apprentices, 73.

(*g*) *Cooper v. Simmonds* (1862), 7 H. & N. 707. An infant bound himself apprentice to a tradesman, his executors and administrators for seven years carrying on the same business in the town of Wolverhampton; the apprentice bound to serve the widow, who was sole executrix, and who carried on the same business in Wolverhampton.

(*h*) *Rex v. Peck* (1699), 1 Salk. 66; *Borchier v. Coster* (1662), Keble, 250. But apparently the assignee could not

sue on the deed; Show. 4. There are authorities (*Wadsworth v. Gye* (1665), Sid. 216; *Walker v. Hall* (1666), 1 Lev. 177) that where a master covenants to find the apprentice in meat, drink, and necessaries during the term of apprenticeship, his executors are bound, to the extent of the assets, to perform the covenant. As to right to appoint deputies, *Phelps v. Wincheombe* (1616), 3 Bulst. 77; *Walsh v. Southworth* (1850), 6 Ex. 150. As to assignability of covenants in restraint of trade, see *Jacoby v. Whitmore* (1883), 49 L. T. (N. S.) 335; and p. 105, *supra*.

CHAPTER XXII.

SERVANT'S AUTHORITY AS TO CONTRACTS.

A SERVANT may bind his master by contracts (1) when he is specially authorised to do so ; (2) when he is entrusted with duties for the due discharge of which authority to make such contracts is necessary or usual ; or (3) when third persons have reason to believe from his master's conduct that he has authority to bind his master.

When a master entrusts to a servant the performance of certain duties, there is an implied authority or mandate to enter into contracts which are necessary or usual for the performance of such duties, and persons dealing with servants will not be affected by restrictions which are placed upon the servants' authority unless such restrictions are known to them (*a*).

The relation of master and servant invests the latter with no authority to bind the former (*b*), but the servant may have from the particular duties assigned to him the right to bind his master in regard to contracts. When, for instance, a foreman employed by the owner of a sawmill agreed to supply a quantity of fir-staves, the latter, it was held, was bound by the contract though he had given his foreman no special authority to enter into it (*c*). It is often left to a jury to say whether a servant had authority to enter into a particular contract, or whether his employer held him out as having such authority (*d*). Thus, in *Langan v. The*

(*a*) For early authorities on this subject, see Fitzherbert N. B. 120, G.; *Doctor and Student*, II. chap. xlii., and Noy's *Maxims*, p. 58. One can see by *Nickson v. Brohan*, 10 Mod. 110, how uncertain the law was in 1710. See *Hibbs v. Ross* (1866), L. R. 1 Q. B. 534; *Watteau v. Fenwick & Co.* (1892), 67 L. T. (N. S.) 831.

(*b*) Leake's *Law of Contracts* (5th ed.), 312.

(*c*) *Richardson v. Cartwright* (1844), 1 C. & K. 328. Compare *Dawn v. Simmins* (1880), 44 J. P. 284.

(*d*) *Spooner v. Browning* (1897), 77 L. T. (N. S.) 685; (C. A.) 78 L. T. (N. S.) 98.

Great Western Rail. Co. (e), passengers injured in a collision on defendants' line were carried into plaintiff's inn. The sub-inspector of railway police for the district, who was for the time being the superior of all the station-masters and servants of the company, was on the spot, and he ordered brandy to be given to one of the injured persons. In reply to a question put by the plaintiff as to who would pay for the maintenance of the injured persons, he said, "Don't trouble yourself about that; we'll see that is all right." The plaintiff brought an action against the defendants for board, lodging, and necessities supplied to the injured passengers. It was held, affirming the view of the Queen's Bench, that there was evidence to go to the jury in favour of the plaintiff.

The sub-inspector was the chief person there. It was the interest of the company that the mischief resulting from the accident should be the smallest possible, if the company were liable, and the company might be. Then is there a necessity, under circumstances such as these, for what may be called instantaneous action? Surely it is reasonable to say that the person who is chief in office where the accident takes place should have authority to do those things which must be done at once, and which are presumably for the benefit of the company (*ee*).

It is not clear that a servant is, except in certain special cases, "an agent of necessity." At all events, he has no authority to employ anyone if he can communicate with his employer (*f*).

On the same principle of what is sometimes called "necessary authority," the servant of a horse-dealer or livery stable keeper was entitled to bind his master by giving a warranty, although he had express orders not to give it (*g*). On the other hand, if the servant of a person who does not carry on the business of horse dealing is entrusted to sell a horse on one occasion, and gives a warranty without authority from his master, it will not be binding (*h*).

There is no implied authority to do what is unusual; and hence when an agent, appointed by a mining company to manage a mine, borrowed money of the plaintiffs, who were bankers, it was held he

(*e*) (1874), 30 L. T. (N. S.) 173.

(*ee*) *Per* Bramwell, B., *l. c.* p. 176.

(*f*) *Gawilliam v. Twist*, [1895] 2 Q. B. 84. See p. 24, *supra*.

(*g*) *Howard v. Sheward* (1866), L. R. 2 C. P. 118. In this case evidence of a general practice among horse dealers not to warrant was held to be not

admissible. See *Baldry v. Bates* (1885), 52 L. T. (N. S.) 621.

(*h*) *Brady v. Todd* (1861), 9 C. B. N. S. 592; *Helyear v. Hawke* (1803), 5 Esp. 71; *Miller v. Lawton* (1864), 15 C. B. N. S. 834; *Brooks v. Hassall* (1883), 49 L. T. (N. S.) 569. See *Payne v. Leconfield* (1882), 51 L. J. Q. B. 642.

had no authority to bind the company (*i*). So owners of a ship are bound by contracts of a master with respect to the usual employment of the ship (*k*). But he cannot bind the owners to a contract at variance with the usual employment of the ship, *e.g.*, to carry goods for freight payable to other than the owner (*l*). The relation of master and coachman does not clothe the latter with ostensible authority to pledge his master's credit for forage supplied for his horses (*m*). The distinction is often expressed by saying that when a man appoints a general agent, he is bound by all his acts; but that, when he appoints a special agent, he is bound only to the extent of the authority which he has in fact given (*n*). But this distinction does not bring out the fact that, when a person appears to be a general agent, the master is bound by his acts and is estopped from denying his authority; that the important point is not what the agent's powers are, but what they seem to be; and that, notwithstanding an arrangement to the contrary, it will be assumed that he has usual authority (*o*). If, however, a person dealing with a servant knows that he has a special or limited authority, he is bound to see that the authority is observed.

A master, whose servant has committed frauds, may, by his conduct, be estopped from denying the servant's authority to do the acts out of which the frauds arise, and have to bear the loss under the rule of law that where one of two innocent persons must suffer loss through the acts of a third person, he who has enabled the third person to occasion the loss, must sustain it (*p*).

A servant may have authority from the course of previous dealings to bind his master; if they would naturally lead tradesmen and other persons to believe that a servant is authorised to pledge his master's credit, the latter will be liable. A private arrangement between them forbidding buying on credit, or attaching conditions to doing so, will be no defence. In the case of a groom, who took his master's horses to a smith and farrier to be shod and to be doctored, Lord Kenyon ruled that it was no defence to an action against the master that he had made a special arrangement with his groom by which for a year the groom was to keep

(*i*) *Hartayne v. Bourne* (1841), 7 M. & W. 595.

(*k*) *Myers v. Willis* (1855), 17 C. B. 77; 18 C. B. 886; *Sandemann v. Scurr* (1866), L. R. 2 Q. B. 86.

(*l*) *Reynolds v. Gex* (1865), 34 L. J. Q. B. 251.

(*m*) *Wright v. Glyn*, [1902] 1 K. B. 745.

(*n*) *Per Kenyon, C.J.*, in *East India Co. v. Hensley* (1794), 1 Esp. 112; Ashurst, J., in *Fenn v. Harrison* (1790), 3 T. R. 760; Story on Agency, s. 126.

(*o*) *Summers v. Solomon* (1857), 7 E. & B. 879; *Watteau v. Fenwick & Co.* (1892), 67 L. T. (N. S.) 831.

(*p*) *Farquharson Bros. & Co. v. King & Co.*, [1901] 2 K. B. 697.

his master's horses properly shod and to furnish them with medicine (*g*) ; a decision which, if there were no special facts, is to be regarded as overruled by *Wright v. Glynn* (*r*). On the other hand, if a servant chooses to go to a tradesman with whom there have been no previous dealings—if, for example, as was the case in *Hiscox v. Greenwood* (*s*), a coachman sends, without his master's knowledge, a chaise to a coachmaker who had never been before employed—the master incurs no liability. A common example of this principle occurs when a servant is allowed to make repeatedly purchases on credit on behalf of his master. Tradesmen dealing with him are entitled to assume that he has in these circumstances authority to do that which he usually does with the knowledge or permission of his master, in the absence of notice that his authority is limited, or has been withdrawn. Accordingly, if a servant who usually buys for his master on credit, appropriates to his own use things which have been so bought, the master is liable. On the other hand, if the servant is always in cash beforehand to pay for goods, the master is not liable if the servant misappropriates the money or the goods (*t*). “Nothing,” said Lord Kenyon, in *Stubbing v. Heintz* (*u*), “could be clearer than that where a man gives his servant money to pay for commodities as he buys them, if the servant pockets the money, the master will not be liable to pay it over again.”

To rebut the presumption of authority raised by a previous course of dealings, it must be shown that notice was given of the intention to make a change. The cases seem to show that notice to a servant of a tradesman will not suffice. In *Gratland v. Freeman* (*r*) it appeared that the defendant was in the habit of dealing with the plaintiff, a publican, on credit. He paid his bill and then gave notice to the plaintiff's servant that he would run up no more bills, but only pay for beer as it came. Lord Eldon ruled that the defendant must show that the plaintiff had notice of this change in the manner of dealing, and that notice to the servant alone would not be sufficient.

Even if there have been no previous dealings, the master's conduct may amount to a representation that the servant has authority to contract in his name. Thus, when a coachman with whom his master had a private arrangement that he was to provide

(*g*) *Precious v. Abel* (1795), 1 Esp. 350.

(*r*) [1902] 1 K. B. 745.

(*s*) (1802), 4 Esp. 174.

(*t*) *Rusby v. Searlett* (1803), 5 Esp. 76.

(*u*) (1791), 1 Peake, N. P. 66.

(*v*) (1799), 3 Esp. 85.

horses, went to a stable keeper in his master's livery and ordered horses, the master was liable. Littledale, J., in directing the jury, said:—

If he (the servant) made the contract in his own name, and represented to the plaintiff the agreement between himself and the master, of course under such circumstances the plaintiff cannot recover. But if he made no such representation of any agreement between himself and his master, I think that, by the master's sending him forth into the world wearing his livery, to hire horses which he (the master) afterwards uses, knowing of whom they were hired, and yet not sending to ascertain if his credit had been pledged for them, an implied authority is given, and the master is bound to pay the hire (*x*).

A master will render himself liable if he ratifies the acts of his servant. Ratification may take place in many ways. If the servant orders goods in his master's name, and the latter uses them, knowing or having grounds for believing that they have been so ordered, he will be held to have ratified his servant's act. If he ratify a contract concluded by his servant, he will be taken to ratify it altogether. Thus if he receive the price of a horse sold by his servant, he will be bound by a warranty which the servant may have given in selling it (*y*).

It is often a difficult question, especially when contracts are made orally, to determine whether a master or a servant has been, in fact, trusted. If the servant did not act as his master's agent— if he either expressly or by implication contracted on his own behalf—the master is not liable (*z*).

Has a servant power to pledge his master's credit after he quits his employment? This is a mixed question of law and fact, and depends upon whether his master, after the expiration of the employment, in any way holds the servant out to the world as his agent. With reference to a servant, who had been in the habit of drawing bills of exchange in his master's name, and who was discharged, Holt, C. J., said, "If he draw a bill in so little time after that the world cannot take notice of his being out of service, the bill, in these cases, shall bind the master" (*a*). In a *Nisi Prius*

(*x*) *Rimell v. Sompayo* (1824), 1 C. & P. 254. See *Wright v. Glynn*, note (*m*).

(*y*) *Bristowe v. Whitmore* (1861), 4 L. T. (N. S.) 622.

(*z*) *Williamson v. Barton* (1862), 7 H. & N. 899.

(*a*) *Anon. v. Harrison* (1699), 12 Mod. 346. In *Stavelly v. Uzzelli* (1860), 2 F. & F. 30, Erle, C. J., ruled thus:

"Although the law is clear that the master who has once held out a servant as having authority to contract on credit must withdraw that authority by notice, not to the servant, but to the tradesman, and that it is not enough to do so merely by notice to the servant; yet there is much more than that in this case, and there may be notice by other means than

case (*b*), Pollock, C. B., ruled that a gentleman was liable for corn ordered in his name by a livery stable keeper, H., who had been his coachman, who used to order corn, &c. of the plaintiff, and who continued to wear his livery. The defendant did not give notice to the plaintiff that H. was no longer in his service. It seems that an account was sent to the defendant; but he did not then give any notice to the plaintiff, who continued to supply corn on H.'s orders.

express or actual notice. And here you have the fact that no accounts were sent in, even to the servant (and none to the master), for four years before the servant's death; and no accounts sent in

until after his death, and the plaintiff's removal."

(*b*) *Aste v. Montague* (1858), 1 F. & F. 264.

APPENDIX.

Authority of Servant as to Contracts.

AUTHORITY.

Nickson v. Brohan (1713), 10 Mod. 109. Master sent a clerk who had the general management of his cash concerns with a note to a banker to receive money or bank bills, and the servant got another person to give him for the note a draft upon the banker. The banker failed before the draft was presented: the master liable on the ground that a servant, by transacting affairs for his master thereby derives a general authority and credit from him.

Hazard v. Treatwell (1722), 1 Str. 506. Master sent waterman to plaintiff to buy iron on credit, and paid for it afterwards; sent the same waterman a second time with money; the waterman received the goods, but did not pay the money.

Helgeur v. Hawke (1803), 5 Esp. 71. Person not a horse-dealer sent his servant to *Tattersall's* with horse for sale, with instructions to warrant sound; servant warranted it free from vice; "servant entrusted to do all that he can to effectuate the sale." Ellenborough, C. J. See, however, *Brady v. Todd*, p. 216, n. (c), *supra*, and *Woodin v. Burford* (1834), 2 Cr. & M. 391.

Barrett v. Deere (1823), Mood. & Malk. 200. Payment to a person in

NO AUTHORITY.

Stubbing v. Heintz (1791), Peake's N. P. 66. Master gave successive servants money to pay the bills once a week; one servant did not pay the bills but bought meat on credit for herself. Master not liable.

Pearce v. Rogers (1800), 3 Esp. 214. Plaintiff sued for price of beer supplied to defendant's family. Defendant dealt with plaintiff for porter used by his family, and was in the habit of paying ready money.

Hiscox v. Greenwood (1802), 4 Esp. 174. See p. 218.

Maunder v. Congers (1817), 2 Stark. 281. A master not responsible for liquors ordered by his butler in the name of his master without authority, unless he has been in the habit of paying for goods ordered by the butler. Ellenborough, C. J.

Waters v. Brogden (1827), 1 Y. & J. 457. Cheque given by B. to his bailiff to give to C., in whose favour it was drawn; no authority in bailiff to discount the cheque with A.

Sanderson v. Bell (1834), 2 Cr. & M. 304. *Scemle*, payment to an apprentice in master's counting-house not in the usual course of business is not a good payment to the master.

Hunter v. Berkeley (1836), 7 C. &

AUTHORITY.

a merchant's counting-house, who appears to be entrusted with the conduct of business there, good payment to the merchant though it turned out the person was never so employed by him. *Tenterden, C. J.*

Rimell v. Sampayo (1824), 1 C. & P. 254, p. 219.

Miller v. Hamilton (1832), 5 C. & P. 433. Baker delivered bread from week to week. He was paid many sums by housekeeper and receipted weekly bills for a date after the time for which housekeeper paid him; defendant liable, as he did not prove he had given to housekeeper money to pay.

Smith v. Hull Glass Co. (1852), 11 C. B. 897. Defendants liable for goods supplied to them on the orders of manager, appointed to superintend and transact, under the control of the directors, the manufacturing business of the company, "although no express delegation of authority." So *Totterdell v. Farcham Blue Brick Co.* (1866), 35 L. J. C. P. 278; *Geake v. Jackson* (1867), 36 L. J. C. P. 108.

Summers v. Solomon (1857), 7 E. & B. 879. Defendant, who resided near London, had a jeweller's shop at Lewes managed by A., who gave orders at Lewes for articles to be sent to the shop. Plaintiff, who resided in London, sent articles by A.'s orders to Lewes. A. ran away from Lewes, came to London, verbally ordered articles of jewellery, and took them away, telling plaintiff he was going to take them to Lewes. Plaintiff had no notice of withdrawal of agency. *Held*, that there was evidence upon which the jury might find A. to be defendant's general manager. But see 3 H. & N. 794.

Smith v. McGuire (1858), 3 H. & N. 561. Defendant liable on charter-party signed by person whom he had left in charge of his business, although that person signed "per pro," and had received special instructions, which he exceeded.

Howard v. Shevard (1866), L. R. 2 C. P. 148; p. 216.

Walker v. Great Western Ry. Co. (1867), L. R. 2 Ex. 228. Defendants liable for services of surgeon employed by their general manager to perform an operation on a servant injured by an accident.

NO AUTHORITY.

P. 413. A. ordered of B. two suits of livery a year for her coachman. At the request of the coachman B. supplied plain clothes instead of one of the suits; B. could recover only for livery supplied.

Accey v. Fernie (1840), 7 M. & W. 151. Payment to country agent of insurance company after period for payment; no authority to vary time of payment.

Metcalfe v. Lumsden (1844), 1 C. & K. 309. An authority to a servant, a common drover, to sell in market overt; not general authority to sell elsewhere. *Rolle, B.*

Cox v. Midland Ry. Co. (1849), 3 Ex. 268. Defendants not liable for surgical attendance on injured passengers ordered by station-master. But query. To same effect, *Montgomery v. North British Ry. Co.* (1878), 5 R. 796.

William v. Twist, [1895] 2 Q. B. 84. Driver of defendant's omnibus ordered by police to discontinue driving; driver and conductor tell third person to drive the omnibus to defendant's yard, only a quarter of a mile distant; plaintiff injured by third person's negligent driving. *Held*, no authority to employ third person.

Spooner v. Browning (1897), 77 L. T. (N. S.) 685; (C. A.) 78 L. T. (N. S.) 98. Defendants stockbrokers; their clerk received orders from plaintiff, which they carried out, sending him bought notes by the clerk; plaintiff handed cheques to clerk, one of them payable to clerk himself; no communication save through clerk. Other orders given by plaintiff to clerk, who never communicated them to defendants, but forged bought notes and appropriated proceeds of plaintiff's cheques which he thereby obtained. Action by plaintiff against defendants in respect of orders not carried out. *Held*, no evidence of "holding out" by defendants.

Wright v. Glyn, [1902] 1 K. B. 745 (C. A.). Defendant's coachman received, besides wages, a fixed sum per horse to pay for forage and shoeing; coachman ordered forage on credit from plaintiff, saying he was defendant's coachman. Plaintiff

AUTHORITY.

Langan v. Great Western Ry. Co. (1874), 30 L. T. (N. S.) 173, Ex. Ch., affirming 26 L. T. (N. S.) 577; p. 216.

Beer v. London & Paris Hotel Co. (1875), L. R. 20 Eq. 412. Secretary of company authorised agent to execute contract of sale, both within Statute of Frauds and Companies Act, 1867.

As to servant's authority to give receipts, *Thorold v. Smith* (1700), 11 Mod. 87; *Bridges v. Garrett* (1869), 38 L. J. C. P. 242; and *Coleman v. Riches* (1855), 16 C. B. 104. As to tender to servant being equivalent to tender to master, *Moffatt v. Parsons* (1814), 5 Taunt. 307; and *Wilmott v. Smith* (1828), Mood. & Malk. 238. As to admissions by servants, *Garth v. Howard* (1832), 8 Bing. 451; and *Great Western Ry. Co. v. Willis* (1865), 34 L. J. Ch. 195.

Watteau v. Fenwick (1892), 67 L. T. (N. S.) 831. H., manager of defendants' public-house, forbidden to buy cigars on credit, bought cigars on credit from plaintiff, who knew at the time nothing of defendants. *Held*, the purchases within scope of manager's usual authority; defendants liable.

NO AUTHORITY.

never saw or communicated with defendant. *Held*, coachman had no ostensible authority to order the forage.

CHAPTER XXIII.

SERVANTS' LIABILITY TO THIRD PERSONS.

Contracts.

THIS question really belongs to the law of principal and agent ; but some of the points most commonly affecting servants may be noted.

Servants incur no liability on contracts made through them if they contract as their masters' agents.

Servants are subject to the ordinary liabilities of agents. They are not liable if they contract as agents, but if they contract as principals—if they pledge their own credit, if they exceed their authority, or if they contract without authority, they are personally answerable (*a*). If, in entering into a contract, a servant do not disclose the fact that he is acting for his master, those with whom he deals may sue either him or his master (*b*). To whom credit was given will be a question for the jury if the servant be sued (*c*), and if credit has been given to the master, and the servant have had authority, the servant will not be liable ; but if credit have been given to the servant, he will not escape liability on the mere ground of agency. The settled principle is that “persons who induce others to act on the supposition that they have authority to enter into a binding contract on behalf of third persons, on it turning out that they have no such authority, may be sued for damages for the breach of an implied warranty of authority” (*d*).

(*a*) *Cherry v. Bank of Australasia* (1869), 38 L. J. P. C. 49; Story on Agency, s. 264.

(*b*) See notes on *Thomson v. Davenport*, 2 Sm. L. C. (11th ed.) 379.

(*c*) *Fisher v. Marsh*, 34 L. J. Q. B. 177.

(*d*) Cockburn, C. J., in *Richardson v. Williamson* (1871), L. R. 6 Q. B. 276, 279, referring to *Collen v. Wright* (1857),

7 E. & B. 301; 8 E. & B. 647, where the costs of an action against the supposed principal were recovered: *Downman v. Jones* (1845), 9 Jur. 454. Apparently, according to the authorities, a servant would be responsible when he entered into a contract under the belief, *bonâ fide* but erroneous, that he had authority: *Randell v. Trimen* (1856), 18 C. B. 786; *Kelner v. Baxter* (1866),

But in case of a revocation of authority by death, of which the servant did not know and could not with reasonable diligence have known, the servant will not be liable (*e*). An agent of the Crown is not liable for breach of warranty of authority (*f*).

Whether a person, in any particular case, have contracted merely as agent or no, is a question of the intention of the parties to be collected from the facts (*g*) and, in the case of a written contract, from the contract itself (*h*). But in the latter case it is to be remembered that no parol evidence will be admitted to contradict the written agreement (*i*), and the rule is that when a person signs a contract in his own name, without qualification, he is *prima facie* to be deemed to be contracting personally (*k*).

Rightful receipt of money by a servant for his master is receipt by the master, who must be sued for its return (*l*); *a fortiori*, if the servant have paid it over to the master (*m*), even when the payment to the servant has been made by mistake or extorted by duress of which the servant had no notice, before he so paid it over (*n*); but if he have had such notice, he is liable to repay (*o*). If the servant obtains possession of money by wrong-doing, he is liable to repay it, though he have paid it over to his master (*p*);

L. R. 2 C. P. 174, where the defendants contracted "on behalf of" a principal who was not in existence: *Olliver v. Bank of England*, [1902] 1 Ch. 610; 2 Sm. L. C. (11th ed.) p. 392, notes on *Thomson v. Davenport*; but a servant is not liable for a mistaken misrepresentation of law: *ibid.* p. 394. As to the measure of damages in an action for breach of warranty of authority, see *Re National Coffee Palace Co.* (1883), 24 Ch. D. 367.

(*e*) *Smout v. Ilbery* (1842), 10 M. & W. 1; *Salton v. New Beeston Cycle Co.*, [1900] 1 Ch. 43, where this principle was applied to revocation by the dissolution of a company.

(*f*) *Dunn v. Macdonald*, [1897] 1 Q. B. 401, 555; but servants of the Crown, incorporated by statute, such as the Public Works Commissioners, may be sued upon contracts made by them in their public capacity: *Graham v. Public Works Commissioners*, [1901] 2 K. B. 781.

(*g*) *Harper v. Williams* (1843), 4 Q. B. (N. S.) 219. As to liability of agent on negotiable instruments, see Bills of Exchange Act, 1882, ss. 97, 24, 26; *Leadbitter v. Farrow* (1816), 5 M. & S. 345; *Nicholls v. Diamond* (1853), 9 Ex. 154; *Dutton v. Marsh* (1871), L. R. 6 Q. B. 361.

(*h*) *Tanner v. Christian* (1855), 4 E. & B. 591; *Parker v. Winlow* (1857), 7 E. & B. 942; *Gadd v. Houghton* (1876), 1 Ex. D. 357; *Deslandes v. Gregory* (1860), 2 E. & E. 602. As to the liability of receivers and managers, see *Burt v. Bull*, [1895] 1 Q. B. 276.

(*i*) At any rate for the purpose of discharging an apparent principal: *Mayre v. Atkinson* (1837), 2 M. & W. 440 (a case of custom); *Higgins v. Senior* (1841), 8 M. & W. 834; *Hunfrey v. Dale* (1857), 7 E. & B. 266; Sm. L. C. (11th ed.) vol. ii. pp. 403-414.

(*k*) *Cooke v. Wilson* (1856), 1 C. B. N. S. 153; *Bottomley v. Fisher* (1862), 1 H. & C. 211.

(*l*) *Ellis v. Goulton*, [1893] 1 Q. B. 350. For cases against revenue officers, see *Whitbread v. Brooksbank* (1774), Cowp. 69; *Campbell v. Hall* (1774), Cowp. 205; *Atlee v. Backhouse* (1838), 3 M. & W. 633.

(*m*) *Cary v. Webster* (1716), 1 Stra. 480.

(*n*) *Owen v. Cronk*, [1895] 1 Q. B. 265.

(*o*) *Buller v. Harrison* (1777), Cowp. 565; *Cox v. Prentice* (1815), 3 M. & S. 344; *Murray v. Mann* (1848), 2 Ex. 538.

(*p*) *Miller v. Aris* (1800), 3 Esp. 232; *Snowdon v. Davis* (1808), 1 Taunt. 359; *Steele v. Williams* (1853), 8 Ex. 625.

so also, if he have obtained it by a tort committed in co-operation with or under the direction of his master (*q*). If a servant have received money from his master for payment to a third person, and appropriate the money to the use of that third person or attorn to him in respect of it, he may be liable to an action by the third person for payment to him of that money (*r*).

Torts.

A servant is liable for all torts which he commits, save where the tort consists solely in the omission of a duty, arising out of a contract, to which the servant is not privy.

The master may be liable too, his liability, in such cases, being founded, as it is said, on the liability of the servant; while there are wrongs committed by the servant, *e.g.*, those altogether outside the scope of his duties or merely for his own private ends, for which the master will not be liable (*s*). On the other hand, it would appear that in respect of acts of non-feasance "which, without proof of a contract to do what has been left undone, would not give rise to any cause of action" (*t*) the servant who is not a party to the contract is not liable, because of the absence of privity between himself and the wronged person (*u*). This question has been obscured by a strained use of the terms "negligence," "act of omission" and "act of commission." In nearly every case it is immaterial whether an act be described as one of "omission" or "commission"; it is equally a tort (*t*). A passage in the judgment of Holt, C. J., in *Lane v. Cotton* (*v*) is sometimes

(*q*) *Tagman v. Hopkins* (1842), 4 M. & G. 389.

(*r*) *Howell v. Batt* (1833), 5 B. & Ad. 504.

(*s*) See Chap. XXIV.

(*t*) *Kelly v. Metropolitan Rail. Co.*, [1895] 1 Q. B. 944, per A. L. Smith, L. J., at p. 947.

(*u*) See *Coupe Co. v. Maddick*, [1891] 2 Q. B. 413; though the assumption of the Court in this case that there was no cause of action by the bailor against the servant at all seems questionable: see *Mears v. L. & S. W. Rly.* (1862), 11 C. B. N. S. 850.

(*v*) (1701), 12 Mod. 472, 488. Holt, C. J., dissented from the judgment of the majority of the Court. But it was of course admitted by all that an action on the case would lie against the person who actually took the letter: so in *Whitfield v. Lord le Despencer* (1778), 2 Cowp. 754, 765, where the judgment of the majority in *Lane v. Cotton* was upheld. Mr. Wood thus states the rule recognised in America at p. 674 of his *Law of Master and Servant*: "The servant is never liable to third persons for his failure to perform his master's obligations; but for his own wrongful

cited as authority for the doctrine that a servant's liability for wrongs turns on the distinction between "misfeasance" and "non-feasance." That was an action against the Postmaster-General for the loss of a letter; and it is clear that the "neglect" there spoken of and for which Holt, C. J., refused to hold the particular postman liable, consisted in the breach of a duty arising out of an implied contract between the sender of the letter and the Postmaster-General; for Holt, C. J., compares the right of action against a Postmaster for loss of letters with that against a common carrier for loss of goods; which latter was at the date of that case certainly held to "sound in contract" (*x*).

When a servant sold goods wrongfully or, in other words, was guilty of conversion, he was held liable as a tort-feasor, and he was not excused because he disposed of them for his master's use (*y*). So, too, a servant was held guilty of conversion of certain goods in the following circumstances: the goods of a bankrupt were sent after bankruptcy to the defendant, a clerk in the employment of one Heatheote, and the defendant delivered them to Heatheote. The clerk, it was held, was guilty of conversion, though he acted from unavoidable ignorance, and for his master's benefit (*z*).

On the other hand, mere refusal by a servant to deliver up to the plaintiff goods received from his master, without first getting his master's orders, is no evidence of conversion (*a*).

In an action for libel against a porter, who had distributed parcels containing libellous handbills, it was held to be a good

or negligent acts he is liable to third persons injured thereby, either alone or jointly with his master." Mr. Wharton, on the other hand (s. 536), states that the servant is not liable where there is negligence, but is so when malice exists. Story thus states (s. 308) the rule: "The agent is also personally liable to third persons for his own misfeasances and positive wrongs; but he is not in general (for there are exceptions) liable to third persons for his own non-feasance or omissions of duty in the course of his employment." See *Dickson v. Reuter's Telegraph Co.* (1877), 2 C. P. D. 62; 3 C. P. D. 1; *Alton v. Midland Rail. Co.* (1865), 19 C. B. N. S. 213; and *Playford v. United Kingdom Electric Telegraph Co.* (1869), L. R. 4 Q. B. 706.

(*x*) Pollock, *Law of Torts* (8th ed.), p. 532; *Dalston v. Janson* (1695), 1 Salk. 10.

(*y*) *Perkins v. Smith* (1752), Sayer, 40.

(*z*) *Stephens v. Elwall* (1815), 4 M. & S. 259; *Crane v. White* (1835), 1 Scott,

314; *Hollins v. Fowler* (1874), L. R. 7 H. L. 757.

(*a*) *Mires v. Salehay* (1678), 2 Mod. 242; *Alexander v. Southey* (1821), 5 B. & Ald. 247; *Lee v. Bays* (1856), 18 C. B. 607. In the last mentioned case, Jervis, C. J., observed: "As between master and servant, or perhaps as between principal and agent, where the servant or agent receives from his master or his principal goods, which belong to a third person, on their being demanded of him by such third person, he is entitled to say: 'I received them from my master or my principal; and I require a reasonable time to ascertain whether the party making the demand is the real owner;' and such qualified refusal would not be evidence of a conversion, so as to render him liable." And see *Wilson v. Anderton* (1830), 1 B. & Ad. 459 (refusal by warehouseman to deliver up goods; conversion); *Fryall v. Robinson* (1835), 2 C. M. & R. 495,

defence that the porter was ignorant of the contents of the parcels (*b*).

If a master in *bona fide* assertion of a right, which does not in fact exist, order his servants, *e.g.* to build a wall, and they obey innocently, both master and servants are civilly liable in trespass (*c*).

It has been already stated that a servant who executes unlawful orders will be liable. Individual expressions to the contrary in old reports cannot be regarded as law (*d*).

Can it be maintained as a proposition of law that a servant who knowingly joins with and assists his master in the commission of a fraud, is not civilly responsible for the consequences? All persons directly concerned in the commission of a fraud are to be treated as principals. No party can be permitted to excuse himself on the ground that he acted as the servant of another; and the reason is plain, for the contract of agency or of service cannot impose any obligation on the agent or servant to commit or assist in committing a fraud (*e*).

In *Mill v. Hawke* (*f*), it was held that a surveyor required by statute to obey the orders of a highway board was liable for trespasses committed in the course of obeying the orders of the board. So, too, it is said that if a clerk of works who superintends the erection of buildings give directions which result in the darkening of ancient lights, he will be liable (*g*).

An injunction may be enforced by attachment for contempt of Court against servants or agents, though not parties to the action, if they knowingly aid and abet a defendant, their master, in disregarding the order of the Court (*h*).

It is laid down in an American case (*i*) that one servant can maintain an action against another for negligence, while they are in the employment of the same master. In *Southcote v. Stanley* (*k*), there is a dictum ascribed to Pollock, C. B., to the effect that such an action is not maintainable. The dictum does not appear in the

(*b*) *Day v. Bream* (1837), 2 M. & Rob. 54. As to the ignorance of a news-vendor who disseminates a libel, see *Emmens v. Pottle* (1885), 16 Q. B. D. 354.

(*c*) *Reg. v. James* (1837), 8 C. & P. 131, per Lord Abinger, C. B., at p. 132.

(*d*) *Story on Agency*, s. 310.

(*e*) *Cullen v. Thompson's Trustees* (1862), 4 Macq. 424, per Westbury, L. C., at p. 432; *R. v. Muttons* (1865), 34 L. J. M. C. 54.

(*f*) (1875), L. R. 10 Ex. 92.

(*g*) *Wilson v. Peto* (1821), 6 Moor. 43. Compare *Stone v. Cartwright* (1795), 6 T. R. 411.

(*h*) *Seaward v. Paterson*, [1897] 1 Ch. 545.

(*i*) *Osborne v. Morgan* (1881), 130 Mass. 102; overruling *Ulbro v. Joquith* (1855), 4 Gray, 99.

(*k*) (1856), 1 H. & N. 250. See *Wright v. Roxburgh* (1864), 2 M. 748, where the contrary was decided.

report of the same case in the "Law Journal" (*l*); but it would appear to be in accordance with the principles of our law. There is no reported English decision in which it has been acted upon.

Servant's Criminal Liability for Wrongs.

If a person, by means of an innocent agent or servant, commit a crime, it is the employer and not the agent who is accountable (*m*). So if a master, knowing a right not to exist, order his workmen to do something in assertion of that right, and the workmen, *bonâ fide* believing in his right, obey him, they will not be answerable if incidentally they commit a felony (*n*). But here there is an important distinction to be noted: the act ordered must not be one which the workmen must see they ought to disobey, *e.g.* to shoot a man: it must be *malum prohibitum*, not *malum in se*. The felony in *Reg. v. James* (*n*) was of the former class, viz., the stopping of an airway in a mine contrary to 7 & 8 Geo. IV. c. 30, s. 6, therefore the workmen were acquitted; but even in that case it would have been different if the workmen had known that the master did not believe in his right and intended to stop the airway maliciously (*n*). In *R. v. Taylor* (*o*), a groom, attending his master, who was qualified and was using dogs for killing game, pursued the game with the dogs at his master's command: it was held that the groom was not liable to the penalty under 5 Ann. c. 14, for "keeping and using dogs to kill game"; his qualified master's orders were a good defence. *Primâ facie*, a person, to be convicted of a criminal offence, must have *mens rea* (*p*); and a servant who, in obedience to his master's instructions, conducts a place of public resort in such a way as to violate a statute, may be convicted of aiding and abetting his master in the commission of that offence, within 11 & 12 Vict. c. 43, s. 5 (*q*). But there are offences against statutes in which "guilty mind" need not be an ingredient. Under the Sale of Food and Drugs Act, 1875, a dairy company servant has been convicted of an offence against

(*l*) 25 L. J. Ex. 339.

(*m*) *Reg. v. Bleasdale* (1848), 2 C. & K. 765.

(*n*) *Reg. v. James* (1837), 8 C. & P. 131.

(*o*) (1812), 15 East, 460. See the remarks of Bayley, J., on this case in *Ex parte Sylvester* (1829), 9 B. & C. 61, where an unqualified servant who, in attendance upon his qualified master,

shot a partridge, was convicted under the same Act for "keeping and using a gun to kill game."

(*p*) *Sherras v. De Rutzen*, [1895] 1 Q. B. 918; *Williamson v. Norris*, [1899] 1 Q. B. 7, per Russell, C. J., at p. 14.

(*q*) *Wilson v. Stewart* (1863), 3 B. & S. 913; see *Williamson v. Norris*, see note (*p*), per Russell, C. J., at pp. 13, 14.

s. 6, who "sold" innocently (*r*). An unregistered assistant to a registered chemist was convicted of "selling" poisons in contravention of s. 15 of the Pharmacy Act, 1868 (31 & 32 Vict. c. 121) (*s*). But a servant, not himself licensed, who sells liquor on behalf and by the orders of his master, cannot be convicted of an offence against sect. 3 of the Licensing Act, 1872 (35 & 36 Vict. c. 94) (*t*).

In *Masters v. Lowther* (*u*), a sheriff's officer was attached for extortion under sect. 3 of 7 Will. IV. & 1 Vict. c. 55 (*x*). The secretary of a "watch club" collected subscriptions from the members and forwarded them to a licensed dealer in plate; ballots were held from time to time among the members; the successful member got a watch from the dealer, who paid a commission to the secretary on the amount he collected. The secretary was convicted under sect. 17 of the Inland Revenue Act, 1867, as a person soliciting, taking, or receiving orders for an exciseable article without having in force a proper excise licence (*y*).

The question has been raised whether, in cases under sect. 7 of the Bread Act, 1836, of selling bread from a cart without being provided with scales, the servant is liable as well as the master. It is submitted not. The penal part of that section expressly omits the "journeyman or servant," who is mentioned in the other parts of the section, and refers only to the "baker or seller" (*z*).

There are certain classes of servants and employees who are amenable to the provisions of special Acts (*a*).

In respect of criminal liability for causing death by negligence in the performance of their duties, servants are in the same position

(*r*) *Hutchin v. Hindmarsh*, [1891] 2 Q. B. 181.

(*s*) *Pharmaceutical Society v. Wheelson* (1890), 24 Q. B. D. 683. But a mere intermediary for the receipt and forwarding of orders to his principal is not a "seller" within this section: *Pharmaceutical Society v. White*, [1901] 1 K. B. 601. The person liable under this statute is the actual "seller," whether master or servant: *Pharmaceutical Society v. London and Provincial Supply Association, Ltd.* (1880), 5 A. C. 857.

(*t*) *Williamson v. Norris*, [1899] 1 Q. B. 7.

(*u*) (1852), 11 C. B. 948.

(*x*) Re-enacted by sect. 29 of the Sheriffs Act, 1887.

(*y*) *Killick v. Graham*, [1896] 2 Q. B. 196. A "bonâ fide traveller" for a

licensed firm does not lose the protection of the proviso to this section by reason of his having an office where he takes his orders: *Stuckberg v. Spencer* (1886), 55 L. J. M. C. 141.

(*z*) See J. P. vol. 50, p. 138; J. P. vol. 51, pp. 457 and 477.

(*a*) *E.g.*, Railway Servants, 3 & 4 Vict. c. 97, s. 13; 5 & 6 Vict. c. 55, s. 17 (misconduct); Seamen, Merchant Shipping Act, 1894, ss. 220-238 (offences against discipline); Miners, Coal Mines Regulation Act, 1887, s. 60; Metalliferous Mines Regulation Act, 1872: Offences against the Person Act, 1861 (24 & 25 Vict. c. 100, s. 35 (furious driving by person in charge of carriage); and others; though many of these provisions affect the relations between the master and the servant rather than those between the servant and third persons.

as other members of the community (*b*). Servants are sometimes indicted jointly with their masters for nuisance (*c*).

In *R. v. Knull* (*d*) a compositor was convicted of printing a treasonous libel; and in the case which follows (*e*) there is a dictum by the Lord Chief Justice that "if a servant carries a libel (*f*) for the purpose of distribution for his master, he certainly is answerable for what he does, though he cannot so much as write or read."

To justify a conviction for making a false entry in an account under the Falsification of Accounts Act, 1875 (38 & 39 Vict. c. 24, s. 1), the account in question must belong to or be in the possession of the employer (*g*).

(*b*) See *Reg. v. Hughes* (1857), 26 L. J. (N. S.) M. C. 202. As to effect of master's order, see p. 228, *supra*. As to larceny and embezzlement by servants, see 24 & 25 Vict. c. 96, ss. 67, 68, 72, and remarks on p. 10, *supra*, and note there.

(*c*) *Reg. v. Prase* (1832), 4 B. & Ad. 30; *Reg. v. Butts* (1850), 16 Q. B. (N. S.) 1022.

(*d*) (1728), 1 Barnard. 305.

(*e*) *R. v. Nutt*, *ibid.* 306.

(*f*) *Sci*—knowing it to be a libel.

(*g*) *Reg. v. Pulton*, [1906] 1 K. B. 7.

CHAPTER XXIV.

CIVIL LIABILITY OF A MASTER TO THIRD PERSONS FOR THE
ACTS OR DEFAULTS OF HIS SERVANTS.

A MASTER is liable to third persons for his servant's tortious acts done in the course of his employment.

The principle is expressed in the authorities in many ways. For example, it is said, "the master is answerable for the act of his servant, if done by his command, either expressly given or implied" (*a*); a statement of the law which is open to exception, because, as will be seen, a master may be responsible for acts done contrary to his commands. Sometimes it is said, "the law casts upon the master a liability for the act of his servant in the course of his employment" (*b*), or the master "is considered as bound to guarantee third persons against all hurt arising from the carelessness of himself, or of those acting under his orders, in the course of his business" (*c*). Masters, it is also said, are liable for the conduct of their servants when "acting within the scope of their authority or the normal duties of their employment" (*d*); when "actually engaged on their master's business" (*e*), or when acting "as their agents" (*f*), "with their master's authority, and upon their business" (*g*); "for negligences and omissions of duty of their servant, in all cases within the scope of his employment" (*h*), "in the ordinary course of business" (*i*), "in the course of the exercise of their duties" (*k*), "in the course of the service and for

(*a*) Blackstone, 1 Com. 417.

(*b*) Willes, J., in *Limpus v. General Omnibus Co.* (1862), 1 H. & C. 539.

(*c*) Lord Cranworth, in *Bartonskill Coal Co. v. Reid* (1858), 3 Macq. 283; *Burns v. Paulson* (1873), L. R. 8 C. P. 563.

(*d*) *Sterens v. Woodward* (1881), 50 L. J. Q. B. 231.

(*e*) Willes, J. in *Patten v. Rea* (1857), 2 C. B. N. S. 607. See also the law as

stated by the same judge in *Bayley v. Manchester, Sheffield & Lincolnshire Rail. Co.* (1872), L. R. 7 C. P. 415, 420.

(*f*) Williams, J., in *Patten v. Rea*, see note (*f*).

(*g*) Cockburn, C. J., in *Patten v. Rea* (1857), 2 C. B. N. S. 607.

(*h*) Story on *Agency*, s. 423.

(*i*) *Edwards v. London & North-Western Rail. Co.* (1870), L. R. 5 C. P. 445.

(*k*) *Walker v. South-Western Rail. Co.* (1870), L. R. 5 C. P. 640.

his (the master's) benefit" (*l*), in the master's business and "within the scope of the probable authority which must be supposed to be given to the servant" (*m*), "within the scope of the power or confidence reposed in the servant" (*n*), "in the particular or general employment of a servant" (*o*); "for all acts done by a servant in the conduct of his employment, and in furtherance of such employment, and for the benefit of his master" (*p*). All of these expressions are somewhat ambiguous, though they have been elucidated in a long series of decisions. They indicate that different reasons have been given at different times for the rule above stated; and are various modes of expressing the fact that, in the case of masters of servants, the maxim, *culpa tenet suos auctores*, does not hold good; that this relationship forms an exception to the general rule, that no one is responsible for any conduct but his own; and that masters are answerable to third parties or strangers for the acts of their servants when engaged in or about their business (*q*).

This liability is not confined to acts of negligence, though they are the torts for which masters are most frequently held responsible. The liability extends to all other torts—for example, to fraud—if committed within the scope of a servant's duties, and even to criminal acts done by the servant in excess of his authority, but in furtherance of the master's interests (*r*).

But it is for the plaintiff to make out *prima facie* that the servant was acting in the course of his employment: therefore where the plaintiff merely proved that the conductor was driving an omnibus in the absence of the driver, and gave no evidence of special authority to do so, the case was held to have been rightly withdrawn from the jury (*s*).

The rule as to liability for an agent's fraud which is now established is, to quote the words of Willes, J., in *Barwick v. The English Joint Stock Bank* (*t*)—an action against a bank for

(*l*) Willes, J., in *Barwick v. English Joint Stock Bank* (1867), L. R. 2 Ex. 259.

(*m*) Bayley, J., in *A.-G. v. Siddon* (1830), 1 Tyr. 41.

(*n*) *Mechanics Bank v. The Bank of Columbia*, 5 Wheaton, 326.

(*o*) *Mackenzie v. MacLeod* (1834), 10 Bing. 385.

(*p*) Per Lopes, L. J., in *Dyer v. Munday*, [1895] 1 Q. B. 742, 747. The attempt was made to argue *Earl v. Lubbock*, [1905] 1 K. B. 253, on this ground, assuming the existence of a

duty owed by the defendant to the plaintiff: had there been any duty owed to the plaintiff, the master and servant point might have been conceded; the decision was that there was no duty owed by the defendant to the plaintiff.

(*q*) See Appendix B, as to reasons for the rule.

(*r*) *Dyer v. Munday*: see note (*p*): *Coppen v. Moore* (No. 2), [1898] 2 Q. B. 306.

(*s*) *Beard v. London General Omnibus Co.*, [1900] 2 Q. B. 530.

(*t*) (1867), L. R. 2 Ex. 259.

fraudulent misrepresentation on the part of its manager—"that the master is answerable for every such wrong of the servant or agent as is committed in the course of the service and for the master's benefit, though no express command or privity of the master be proved." This statement of the law has not been universally or readily acquiesced in, and probably the phrase "for the master's benefit" is superfluous. Several judges have been reluctant to admit that the doctrine is true of certain torts, and in particular of fraud. Why should A. be responsible for the false statements of B. which he never in fact authorised, and which may be contrary to his wishes? Fraud without any fraudulent mind in the person who is made answerable for it, seems nonsensical. "I do not understand legal fraud," said Bramwell, L. J., in *Weir v. Bell* (u); "to my mind it has no more meaning than legal heat or legal cold, legal light or legal shade." It is, however, too late to question the doctrine stated in *Barwick v. English Joint Stock Bank*. It is in accordance with a long series of decisions beginning with *Hern v. Nichols* (x). Mr. Justice Willes's statement of the law has frequently been cited with approval (y); and it has been acted upon more than once by the House of Lords and the Privy Council (z). The doctrine may rest upon a fiction; but if so, it is a fiction in accordance with others which are well recognised—the doctrine, for example, that notice to the agent may be notice to the principal, and that a servant's knowledge may sometimes be treated as the master's (a). It is as easy to admit that A., though morally innocent, is legally guilty of fraud through his servant or agent, as it is to admit that A. has been negligent through his servants, when in point of fact he has not been wanting in prudence, and when they have done in their folly that which he in his wisdom forbade.

The rule just stated applies to corporations or companies. It extends to companies or corporations—such as Dock Trusts—

(u) (1877), L. R. 3 Ex. D. 238.

(x) (1701), 1 Salk. 289.

(y) *Mackay v. Commercial Bank of New Brunswick* (1874), L. R. 5 P. C. 391; *Saift v. Win'erbotham* (1873), L. R. 5 Q. B. 241; *British Mutual Banking Co., Ltd. v. Charnwood Forest Rail. Co.* (1887), 18 Q. B. D. 714.

(z) *Bank of New South Wales v. Ouston* (1879), 4 A. C. 270; and *Houldsworth v. City of Glasgow Bank* (1880), 5 A. C. 317.

(a) *Baldwin v. Cassella* (1872), L. R. 7 Ex. 325 (knowledge of a dog's mis-

chievous character). *Stiles v. Cardiff Steam Navigation Co.* (1864), 33 L. J. Q. B. 310. In his criticism of the judgment in *Barwick v. The English Joint Stock Bank*, Bramwell, L. J., suggests as "the true ground," "that every person who authorises another to act for him in the making of any contract, undertakes for the absence of fraud in the execution of the authority given." The doctrine of agency, according to which the principal is liable for the acts of the agent incident to his employment, covers both.

entrusted by the State with the performance of certain duties, although the revenues are not appropriated to the use of the individual corporators, or to that of the corporation itself (*b*). Companies have been held responsible for creating a nuisance, such as obstructing a highway (*c*); for publishing by telegram a libel (*d*); for wrongful arrests or malicious prosecutions (*e*); for wrongfully detaining bank notes (*f*); for wrongful assault by their servant (*g*); for reckless driving (*h*); and for infringing a patent (*i*).

There was a reluctance, especially in the Chancery Courts, to impute to companies the frauds of their directors or servants. How could directors, it was asked, be the agents of the company, their employer, to cheat or deceive? In *Re North of England Joint Stock Banking Co., Ex parte Bernard* (*k*), Parker, V.-C., said that they could not be the company's agents for that purpose. So in *Dodgson's Case* (*l*), Knight-Bruce, V.-C., said, that "whatever fraud there may be, if fraud there be, it is charged against the directors, who cannot be the agents of the body of shareholders to commit a fraud." Similar expressions were used by Page Wood, V.-C., in *Re Athenæum Assurance Co.* (*m*); Romilly, M. R., in *Duranty's Case* (*n*); Lord Chelmsford in *Re Hull and London Life Assurance Co.* (*o*). In the *Western Bank of Scotland v. Addie* (*p*), decided in 1867, Lord Cranworth said:—

An attentive consideration of the cases has convinced me that the true principle is, that these large corporate bodies, through whose agencies so large a portion of the business of the country is now carried on, may be made responsible for the frauds of those agents to the extent to which the companies have profited from those frauds; but they cannot be sued as wrong-doers, by imputing to them the misconduct of those whom they have employed.

(*b*) *Mersey Dock Trustees v. Gibbs* (1866), L. R. 1 H. L. 93.

(*c*) *R. v. Great North of England Rail. Co.* (1816), 9 Q. B. 315.

(*d*) *Whitfield v. South Eastern Rail. Co.* (1858), E. B. & E. 115. See also *R. v. City of London*, cited in note to *Whitfield v. South Eastern Rail. Co.* The question whether a corporation can be rendered liable for a libel published on a privileged occasion by proving "express malice" in its servant, who published it, was raised but not answered in *Nevill v. Fine Arts, &c. Co.*, [1895] 2 Q. B. 156, 169; but it has been answered affirmatively by the Privy Council in *Citizens' Life Assurance Co., Ltd. v. Brown*, [1904] A. C. 423. A corporation cannot sue for a libel charging the corporation with corruption: *Mavor of Manchester v. Williams*, [1891] 1 Q. B. 94.

(*e*) *Edwards v. Midland Rail. Co.* (1880), L. R. 6 Q. B. D. 287; *Cornford v. Carlton Bank*, [1899] 1 Q. B. 392.

(*f*) *Yarborough v. Bank of England* (1812), 16 East, 6.

(*g*) *Eastern Counties Rail. Co. v. Broom* (1851), 6 Ex. 314; *Bagley v. Manchester Rail. Co.* (1873), L. R. 8 C. P. 148.

(*h*) *Green v. London General Omnibus Co.* (1859), 7 C. B. (N. S.) 290.

(*i*) *Butts v. De Vitre* (1868), L. R. 3 Ch. 429.

(*k*) (1852), 5 De G. & Sm. 283.

(*l*) (1849), 3 De G. & Sm. 85.

(*m*) (1859), John. 451.

(*n*) (1858), 26 Beav. 268.

(*o*) (1858), 2 De G. & J. 275.

(*p*) L. R. 1 H. L. (Sc.) 145. See the remarks of Lord Lindley upon this decision in *Citizens' Life Assurance Co. v. Brown*, [1904] A. C. 423, 426.

In Common Law pleading the fraud of the agent was treated by a sort of fiction as the fraud of the principal. Courts of Common Law were therefore more disposed to entertain the view that a company might be sued for its servants' or agents' frauds. Courts of Equity were familiar with the doctrine that a principal, though innocent, might suffer for the fraud of an agent to the extent to which he was benefited thereby. They were, therefore, disposed to confine the liability of companies for the fraudulent representations of directors to those cases in which the former were benefited. It is submitted, however, that the words cited above from the judgment of Willes, J. (*pp*), express the true rule. Strange though it may seem to attribute fraud or an intention of any kind to a corporation, practical exigencies have required the law to be moulded so as to meet the development of joint-stock enterprise. Not finding a remedy to hand, the Courts have made one (*q*).

In *Ruben and another v. Great Fingall Consolidated and others* (*r*), the plaintiffs lent money to R., the secretary of the defendant company, on the security of a certificate in the plaintiffs' favour for shares in the defendant company, issued to them by R. The company's seal was fraudulently affixed to the certificate and the directors' signatures thereon forged by R. for his own purposes. On the discovery of the fraud, the plaintiffs had to repay the money lent to R. to a bank who had advanced it to them:—*Held*, that in the absence of any evidence that the defendant company held out R. as having authority to do more than merely deliver share certificates, the defendants were not estopped by the forged certificate from disputing the plaintiffs' claim or responsible to them for the wrongful act of R.

(*pp*) In *Barwick v. English Joint Stock Bank* (1867), L. R. 2 Ex. 259: see p. 233, *supra*.

(*q*) See remarks of Selborne, L. C., in *Houldsworth v. City of Glasgow Bank* (1880), L. R. 5 A. C. 317, 326; Lord Westbury, in *Congreave v. New Brunswick Rail. Co.* (1862), 9 H. L. C. 725; Sir Montague Smith in *Mackay v. Commercial Bank of New Brunswick* (1874), L. R. 5 P. C. 394, 411; *Sacco v. Francis* (1877), 3 A. C. 106. It was once doubtful whether any action for trespass lay against a corporation: Kyd, 4, 223. In trespass, *capies* and *exigent* are the proper processes. How, it was argued, could they be employed against a corporation? Similarly Holt, C. J., laid it down that a corporation was not indictable: 12 Mod. 559. The contrary is now clear: *R. v. Great North of England Rail. Co.* (1846), 9 Q. B. 314; *R. v. Scott* (1842), 3 Q. B. 547. Some judges in modern

times have adhered to the old doctrine in regard to acts which appeared to imply or require proof of malice, e.g., *Alderson, B., in Stevens v. Midland Counties Rail. Co.* (1854), 10 Ex. 352; Lord Bramwell in *Abrath v. North Eastern Rail. Co.* (1886), 11 App. Cas. 247, 250. See note (*d*), *supra*. See, however, *Henderson v. Midland Rail. Co.* (1871), 20 W. R. 23; *Edwards v. Midland Rail. Co.* (1881), 6 Q. B. D. 287; *Whitfield v. South Eastern Rail. Co.* (1858), E. B. & E. 122; *Green v. London General Omnibus Co.* (1859), 7 C. B. N. S. 290; *Cornford v. Carlton Bank*, [1899] 1 Q. B. 392; *Citizens' Life Assurance Co. v. Brown*, [1904] A. C. 423. It is not every fraud of a servant or agent for which a master or principal will be answerable: see the cases collected in the argument in *Houldsworth v. City of Glasgow Bank* (1880), L. R. 5 A. C. 317. (*r*) [1906] A. C. 439.

It is almost needless to say that, if the fraud be committed for the servant's own ends, the company, his employers, will not be liable (s). The master's liability can only be for acts done in the course of the servant's employment in the service of the master sought to be made liable. Hence, if A., the owner of a ship, demise it by charter to B., so that the master becomes subject to the control of B., A. will not be answerable for the master's acts or defaults (t), and it will make no difference that the injured person has no knowledge of the charter.

Innkeepers are at Common Law liable to their guests for loss of luggage, &c., caused by the negligence or larceny of their servants (u). But it is an answer to show that the guest has been guilty of gross negligence which has contributed to his loss (x). When a guest at an inn went to bed leaving his door ajar, and some one entered in the night and stole money from the pockets of his trousers, which he had left on a chair, it was held that the proper question for a jury was whether the loss would have occurred "if the guest had used the ordinary care that a prudent man may be reasonably expected to have taken under the circumstances" (y). The 26 & 27 Vict. c. 41, s. 1, limits the liability of an innkeeper to 30*l.*, except when the goods or property shall have been lost, stolen, or injured through the wilful act, default, or neglect of the innkeeper or any servant in his employ, or shall have been deposited with the innkeeper expressly for safe custody (z).

In *Finnane v. Small* (a), it was held that a bailee for hire of goods, which are stolen by his servant, is not liable unless he has been guilty of gross negligence.

At Common Law common carriers are liable not only for the negligence but also for the frauds and larceny of their servants (b). Though their liability for felony on the part of their servants has been disputed, it follows from the fact of their being insurers. The 11 Geo. IV. & 1 Will. IV. c. 68, s. 8, expressly provides:—

Nothing in this Act shall be deemed to protect any mail contractor, stage-

(s) *British Mutual Banking Co., Ltd. v. Charnwood Forest Rail. Co.* (1887), 18 Q. B. D. 714; *Ruben v. Great Fingall*, [1906] A. C. 439.

(t) *Baumwoll Manufactur. &c. v. Furness*, [1893] A. C. 8. See p. 15, *supra*.

(u) *Kent v. Shuckard* (1831), 2 B. & Ad. 803.

(x) *Calyp's Case*, 8 Rep. 32 a; Sm. L. C. (11th ed.), vol. i. 119; *Richmond v. Smith* (1828), 8 B. & C. 9.

(y) *Cashill v. Wright* (1856), 6 E. & B. 891.

(z) *Oppenheim v. White Lion Hotel Co.* (1871), L. R. 6 C. P. 515. See *Dixon v. Birch* (1873), L. R. 8 Ex. 135. (Salaried manager not innkeeper.) See as to defects in notice, *Spice v. Bacon* (1877), 2 Ex. D. 463. As to the liability of a restaurant-keeper for the loss of a guest's coat, which was taken and hung up by a waiter, see *Ullzen v. Nicols*, [1894] 1 Q. B. 92.

(a) (1795), 1 Esp. 315.

(b) *Browne's Law of Carriers*, p. 58.

coach proprietor, or other common carrier for hire, from liability to answer for loss or injury to any goods or articles whatsoever arising from the felonious acts of any coachman, guard, bookkeeper, porter, or other servant in his or their employ, nor to protect any such coachman, guard, bookkeeper, or other servant, from liability for any loss or injury occasioned by his or their own personal neglect or misconduct (c).

A master is answerable for the negligence or other tortious conduct of his servant in doing the class of acts which he was ordered or authorised to do.

This proposition is really another way of stating the preceding rule, and expresses a mean between two extremes. It would, on the one hand, be wholly unreasonable to hold a master answerable for acts of his servants, the connection of which with their service was fortuitous or exceedingly remote. No prudent man would venture to employ another if such were an incident of the contract of hiring and service. On the other hand, the responsibility of masters would be slight, the remedies of injured persons would be worth little, if a master were liable only for acts which he had expressly or by implication ordered. Probably the exact character of the employer's responsibility cannot be more accurately defined than it is by Willes, J., in words frequently quoted with judicial approval:—

He (the employer) has put the agent in his place to do that class of acts, and he must be answerable for the manner in which the agent has conducted himself in doing the business which it was the act of his master to place him in (d).

Servants are liable to err and to abuse their position. Masters must take the risk of mistakes; they will not be heard to say, "I told my coachman to drive slowly; I am not answerable if he drove too fast." A groom who was riding his master's horse, and who was desirous of overtaking his master, spurred it recklessly as he passed a waggon; the horse kicked and struck the waggoner (e);

(c) As to who are servants, see *Machu v. London & South Western Rail. Co.* (1848), 2 Ex. 415; and *Way v. Great Eastern Rail. Co.*, 1 Q. B. D. 692. As to what will be evidence of stealing by servant, see *Great Western Rail. Co. v. Rimell* (1856), 18 C. B. 575; and

McQueen v. Great Western Rail. Co. (1875), L. R. 10 Q. B. 569.

(d) *Barwick v. English Joint Stock Co.* (1867), L. R. 2 Ex. 259, 266.

(e) *North v. Smith* (1861), 10 C. B. N. S. 572.

the master was liable for this reckless act. A coal-merchant sends his carman to deliver coals at the house of a customer; the carman allows the coal-hole in the pavement to be open and unguarded; a passer-by, falling into the opening, is hurt; the coal-merchant is responsible (*f*). A servant negligently leaves a horse and cart in the street; a passer-by strikes the horse; an accident occurs; the master is liable (*g*). A tramway-conductor, believing that a passenger cannot or will not pay his fare, pushes him off the car, and the passenger falls and is injured; the company is liable (*h*). A lavatory on an upper floor was used by the defendant's servants; his foreman turned on the tap, in order to wash, and, finding no water, did not turn the tap off when he left for the night; when the water supply was turned on next morning it overflowed and damaged the goods of the plaintiff on the floor below; the defendant was held liable (*i*). A harbour-master permitted the use of a lock to ground the plaintiffs' ship for repairs, representing the lock bottom to be level, which it was not in fact; in consequence the ship on being grounded was injured; the employers of the harbour-master were held liable (*k*). A cab-owner lets out a cab and horse to a driver to use at his discretion; the driver, returning to the stables, drives on to get some snuff for himself, and on his way back to the stables injures the plaintiff; the cab-owner is liable (*l*). So where a person was induced to continue to supply oats on credit to a customer of a bank on the strength of the representation of the manager, who fraudulently concealed the fact that a certain guarantee must be of no value, the bank was held answerable for his fraud (*m*).

It matters not what were the instructions given to the servant as to the manner in which he ought to do his duty; it matters not that a servant has abused his authority, exceeded or deviated from his instructions; it will be no defence in proceedings against the master that his servant has done improperly that which he was ordered to do properly. Thus it is no answer in an action for

(*f*) *Whiteley v. Pepper* (1877), 2 Q. B. D. 276.

(*g*) *Illidge v. Goodwin* (1831), 5 C. & P. 190.

(*h*) *Smith v. North Metropolitan Tramways Co.* (1891), 55 J. P. 630 (C. A.); *Furlong v. South London Tramways Co.* (1884), 48 J. P. 329. Compare *Poulton v. L. & S. W. Rail. Co.* (1867), L. R. 2 Q. B. 534, where the act was *ultra vires* the company.

(*i*) On the ground that it was "an

incident of the servant's employment": *Ruddiman & Co. v. Smith and others* (1885), 60 L. T. (N. S.) 708. See *Stevens v. Woodward* (1881), 6 Q. B. D. 318, where, in a similar case, the servant was forbidden to use the lavatory.

(*k*) *The Apollo; Little and others v. Port Talbot Co.*, [1891] A. C. 499.

(*l*) *Venables v. Smith* (1877), 2 Q. B. D. 279.

(*m*) *Barwick v. English Joint Stock Co.*, see note (*d*).

infringement of a patent against a company that its servants acted against the express orders of the directors (*n*). It is immaterial, except so far as it helps to define the servant's duties, that he received precise instructions or that he was directed to be careful. The maxim *respondet superior* would be nullified if an employer could escape liability by merely enjoining care or caution. In short, it is the nature of the employment and not that of the particular instructions which determines the master's liability. Whatever arrangement he makes with his servants, the law will hold that "there is an implied authority to do all those things that are necessary for the protection of the property entrusted to a person, or for fulfilling the duty which a person has to perform" (*o*).

This was strikingly exemplified in the case of *Limpus v. General Omnibus Co.* (*p*), to which reference has already been made. The defendants' drivers had printed instructions "not on any account to race with or obstruct another omnibus, or hinder or annoy the driver or conductor thereof in his business." A driver in the service of the defendants drove his omnibus across the road in front of a rival omnibus and overturned it. "I pulled across him," said the driver, "to keep him from passing me, to serve him as he had served me." Wightman, J., thought the defendants not liable, the act being wholly wilful and unjustifiable on the part of the servant, and quite beyond the scope of his employment. But the rest of the Court was of opinion that the act having been done while the servant was acting in the course of his master's service and for his benefit, the master was liable. Speaking of the instructions given to the driver, Willes, J., observed:—

I beg to say, in my opinion those instructions were perfectly immaterial. If they were disregarded, the law casts upon the master the liability for the acts of his servant in the course of his employment, and the law is not so futile as to allow the master, by giving secret instructions to a servant, to set aside his own liability. I hold it to be perfectly immaterial that the master directed the servant not to do the act which he did. As well might it be said that if a master employing a servant told him that he should never

(*n*) *Betts v. De Vitre* (1868), L. R. 3 Ch. 441; and compare *Stevens v. Woodward* (1881), 6 Q. B. D. 318.

(*o*) Blackburn, J., in *Allen v. London & South Western Rail. Co.* (1870), L. R. 6 Q. B. 65; *Abrahams v. Deakin*, [1891] 1 Q. B. 516, where the test applied was:—"Was the arrest made in protection of the master's property?" So

also in *Stevens v. Hinshelwood* (1891), 55 J. P. 341.

(*p*) (1862), 1 H. & C. 526; *Bayley v. Manchester, Sheffield & Lincoln Rail. Co.* (1873), L. R. 8 C. P. 148; *Dyer v. Munday*, [1895] 1 Q. B. 742; *Lowe v. Royal Society, &c.* (1902), 18 Times L. R. 634.

break the law, he might thus absolve himself from all liability for any act of his servant, though in the course of the employment.

It is a consequence of the same principle that a master will be answerable for things done by a servant if they be performed in such circumstances of emergency as make it part of the servant's duty to act. Thus, in *Goff v. Great Northern Rail. Co.* (q), the defendants were found liable in an action for false imprisonment brought by a passenger who had been given into custody by a superintendent of the line, on a charge of travelling without a ticket with intent to avoid payment. The question in each case appears to be, does the servant represent the master? And it will be assumed that the former has the powers which, looking to the ordinary course of business and general usage, naturally belong to one in his position.

Speaking of this class of cases, in *The Bank of New South Wales v. Ouston* (r), Sir Montague Smith says:—

The result of the decisions in all these cases is, that the authority to arrest offenders was only implied where the duties which the officer was employed to discharge could not be efficiently performed for the benefit of his employer, unless he had the power to apprehend offenders promptly on the spot; though it was suggested that possibly a like authority might be implied in the supposed cases of a servant in charge of his master's property arresting a man who he had reason to believe was attempting to steal, or had actually stolen it (s). In the latter of these cases it is part of the supposition that the property might be got back by the arrest; but in such a case, the time, place, and opportunity of consulting the employer before acting would be material circumstances to be considered in determining the question of authority. . . . An authority to be exercised only in cases of emergency, and derived from the exigency of the occasion, is evidently a limited one, and before it can arise a state of facts must exist which shows that such exigency is present, or from which it might be reasonably supposed to be present. If a general authority is proved, it is enough to show, commonly, that the agent was acting in what he did on behalf of his principal. But in the case of such a limited authority as that referred to, the question whether the emergency existed, or might reasonably have been supposed to exist, arises for decision (t); and that question raises issues beyond the mere facts that the agent acted on behalf of and in the supposed interest of the principal. Were it otherwise, the special authority would be equivalent to a general one.

(q) (1861), 30 L. J. Q. B. 148; *Giles v. Tuff Vale Rail. Co.* (1852), 2 E. & B. 882; and compare *Poulton v. London & South Western Rail. Co.* (1867), L. R. 2 Q. B. 534.

(r) (1879), 4 App. Cas. 270.

(s) See cases in note (o).

(t) See *Gwilliam v. Twist*, [1895] 2 Q. B. 84; where also a doubt is expressed whether, except in certain specific cases, a servant can, on grounds of necessity, delegate his authority to a third person so as to make the master liable for that third person's negligence.

In some cases the Courts appear to have laid down the rule that, although a master is answerable for the consequences of a lawful act negligently done by his servants, he is not answerable for the consequences of an unlawful act done wilfully. In *Lyons v. Martin* (u), for instance, a servant who was authorised to merely distrain cattle *damage feasant*, drove a horse from the highway into the master's close and there impounded it.

In *Bolingbroke v. Local Board of Swinlon* (x), a person to whom the defendants had entrusted complete powers for the management of a sewage farm, wrongfully went upon the plaintiff's farm and did various acts in order to facilitate the flow of drainage along a ditch which separated the plaintiff's from the defendant's land. In both these cases, the masters were exonerated from responsibility. These decisions or, at all events, certain expressions in the judgments are, it is submitted, not reconcilable with recognised authorities. In *Seymour v. Greenwood* (y) and *Bayley v. Manchester, Sheffield, and Lincolnshire Rail. Co.* (z), the conduct of the defendants' servants in forcibly removing passengers was unlawful. All frauds committed by servants in the course of their business are unlawful. Yet employers are answerable for such conduct. No doubt, in *Lyons v. Martin*, Denman, C. J., and Patteson, J., laid stress upon the fact that the conduct of the servant was unlawful in itself. But these *dicta*—which were questioned by Crompton, J., in *Limpus v. General Omnibus Co.* (a)—were probably unnecessary for the decision, the conduct of the servant not being incidental to his duties (b). The fact that an act is wilful or unlawful may be important in determining whether it is within the scope of employment; but the circumstance does not necessarily absolve the master. In *Richards v. West Middlesex Waterworks Co.* (c), a broker in executing a warrant for the defendants assaulted the plaintiff; the defendants were exonerated, "the assault being no part of the duty of the bailiff or his men." In *Dyer v. Munday* (d), the manager and an employee of the

(u) (1838), 8 A. & E. 512. See also *Gordon v. Rolt* (1849), 4 Ex. 365. (This turned on a point of pleading—the distinction between case and trespass—and it is sometimes understood to determine more than it actually did.) In favour of *Lyons v. Martin* may be cited *Waldie v. Duke of Roxburgh* (1822), 1 S. 367; on appeal (1825), 1 W. S. 1, which decided that a person was not liable for a breach of an interdict, which was committed with his knowledge by a servant

(x) (1874), L. R. 9 C. P. 575.

(y) (1861), 7 H. & N. 355.

(z) (1872), L. R. 7 C. P. 415; (1873), L. R. 8 C. P. 148.

(a) (1862), 1 H. & C. 526.

(b) So explained by Willes, J., in *Bayley v. Manchester, &c. Rail. Co.*, l. c. at p. 416 in the argument: "... *Lyons v. Martin*, where the act was a wilfully illegal act, wholly without the scope of the employment."

(c) (1885), 15 Q. B. D. 660.

(d) [1895] 1 Q. B. 742.

defendant, in endeavouring to get back a bedstead from the plaintiff, on which the instalments due under a hire-purchase contract were in arrears, assaulted the plaintiff's wife; the defendant was held liable, the Court unanimously laying it down that there was no difference for the purpose of master's liability between criminal and tortious acts except in so far as the character of the act may be of itself evidence "that it could not have been done in furtherance of the master's business, or at all in the interests of the master." The distinction between the facts of these two cases seems to be this: in the former the plaintiff was complying with, in the latter the plaintiff was resisting, the defendant's demands, when the assault was committed.

Another test, often suggested, is that, in order to render his master liable, the conduct of the servant must be for his master's benefit. But, in reality, this is contained in the wider proposition that the act of the servant must be one "in the course of the employment": for no act done not for the master's benefit but for the servant's own ends can be said to be in the course of the employment, while "if there is authority"—(express or to be implied from the scope of the business)—"to do the act, it does not matter if the principal is benefited by it" (*e*). A., for example, is employed to warn persons who go over a crossing near a sharp curve of the approach of a train. He forgets to do so, he falls asleep or gets drunk, and B. is run over; A.'s employers would be, it is conceived, answerable for misconduct certainly not intended to benefit them (*f*). It is different when the servant has ceased to act as a servant; when his conduct is no more a necessary or natural consequence of his employment than the act of any stranger. If a servant's negligence be the "effective cause" of injury to the plaintiff, the master is liable; even if the act of a third person, who may be a stranger, intervene between that servant's negligence and the injury. M. was employed by the defendants to drive their cart; T. went with M. to deliver the parcels, but was forbidden to drive; M. left the horse and cart; T. in his absence drove on and injured the plaintiff's carriage; the defendants were held liable (*g*).

(*e*) Per Esher, M. R., in *British Mutual Banking Co. v. Charnwood, &c.* (1887), 18 Q. B. D. 714, 717.

(*f*) It was argued in *Smith v. South Eastern Rail. Co.*, [1896] 1 Q. B. 178, that the duty owed by a man at a level crossing was to the railway company, and not to the public: but the point was

not decided.

(*g*) *Engelhart v. Farrant*, [1897] 1 Q. B. 240; see *Illidge v. Goodwin* (1831), 5 C. & P. 190 (horse and cart left in street by defendant's servant; passer-by strikes the horse; an accident; defendant liable); *McDonnell v. Great Western Rail. Co.*, [1903] 2 K. B. 331.

A master will be liable for a servant's acts if the servant does what he was ordered to do in a roundabout way, or if, in carrying out his master's orders, he does incidentally something on his own behalf.

This class of cases, which approximate to those already named, turns on questions of degree; and it is difficult to lay down a rule which will not include too much or too little. The last part of the above statement of the law may be too wide. A few illustrations will show the tendency of the decisions. In one instance (*h*) a cart driven by a servant of the defendant knocked down and injured the plaintiff in the City of London. It was proved by the defendant that the business of the servants was to go from Burton Crescent Mews to Finchley, and that the spot at which the accident took place was out of the way. In summing up the case to the jury, Baron Parke left the question thus:—

If the servants, being on their master's business, took a detour to call upon a friend, the master will be responsible. If you think the servants lent the cart to a person who was driving without the defendant's knowledge, he will not be responsible. Or, if you think that the young man who was driving took the cart surreptitiously, and was not at the time employed on his master's business, the defendant will not be liable. The master is only liable where the servant is acting in the course of his employment. If he was going out of his way, against his master's implied commands, when driving on his master's business, he will make his master liable; but if he was going on a frolic of his own, without being at all on his master's business, the master will not be liable.

When a servant, contrary to his master's orders, went out of his way to deliver a parcel of his own, and in returning injured the plaintiff, the master was held liable (*i*). On the other hand, a master was not made answerable for the negligence of a servant who, having finished his business and returned home, started on a separate journey for a purpose of his own without his master's knowledge (*k*).

(*h*) *Joel v. Morison* (1834), 6 C. & P. 501.

(*i*) *Sleath v. Wilson* (1839), 9 C. & P. 607. Erskine, J., makes the question turn on whether or not the servant was "intrusted" with the control of the carriage, and his language is virtually repeated by Coleridge, C. J., in *Rayner v. Mitchell*; see note (*k*), *infra*.

(*k*) *Mitchell v. Cresswell* (1853), 13 C. B. 237; *Storey v. Ashton* (1869),

L. R. 4 Q. B. 476. In *Rayner v. Mitchell* (1877), 2 C. P. D. 357, a carman started, for a purpose wholly unconnected with his master's business, to deliver a coffin at the house of a relative, but, in the course of the journey, picked up two of his master's casks: held, that the master was not liable; *Venables v. Smith* (1877), 2 Q. B. D. 279; *Burns v. Poulson* (1873), L. R. 8 C. P. 563; *Sanderson v. Collins*, [1904] 1 K. B. 628.

This is not to be confounded with a class of cases, of which *Coupe' Co. v. Maddick* (l) is a type, where the cause of action is a breach of contract. In that case the defendant had hired from the plaintiff a horse and carriage. After driving the defendant, his coachman, instead of going to the stable, drove in another direction for his own purposes, and by his negligence injured the horse and carriage. The defendant was held liable.

Where a man hires a horse and carriage, there is an implied obligation on his part arising out of the contract to return them in the condition in which he received them, fair wear and tear and certain accidents excepted (m); and if they are injured by the negligence of the hirer's servant while driving in the course of his employment, the latter's remedy is by action on the contract, and can be enforced against the hirer only and not against his servant (n).

But, in such a case, to make the master liable, the servant must, at the time of the injury, have been acting in the course of his employment (o). So in *Cheshire v. Bailey* (p) a jobmaster, from whom the plaintiff had hired a coachman, horse and brougham to drive his traveller about London, was held not liable for the loss of samples, stolen by the coachman and his confederates. But in *Abraham v. Bullock* (q), where the coachman, in similar circumstances, left the brougham unguarded and goods were stolen, the jobmaster was held liable.

A master is not responsible for the acts of servants which are unconnected with and not incident to their service, and which are not done in the course of their employment.

(l) [1891] 2 Q. B. 413. See the discussion of this case in Beven's *Negligence in Law* (2nd ed.), vol. ii. 964.

(m) Is the obligation more than to take reasonable care? See *Sanderson v. Collins*, [1904] 1 K. B. 628.

(n) Per the Court, *ibid.* at p. 415. In *Harris v. Perry & Co.*, [1903] 2 K. B. 219, the defendant, a contractor engaged upon the construction of a "tube" railway, had forbidden his electric locomotive to be used save for the purpose of carrying material, and had provided a platform for passage along the line on foot. The plaintiff, an engineer's inspector, engaged upon the same under-

taking, at the invitation of the defendant's servant, rode on the locomotive "for his own convenience," and was injured by its collision with a truck. There was evidence that the defendant's representative knew of and permitted the use of the locomotive for carrying the defendant's workmen and others. *Held*, that on these facts the defendant was liable for the negligence of his servants.

(o) *Sanderson v. Collins*, [1904] 1 K. B. 628.

(p) [1905] 1 K. B. 237.

(q) (1901), 86 L. T. (N. S.) 796.

Every act by a servant, as has already been stated, is not in law that of his master. He may be bent on his own private ends; he may be engaged on his own and not his master's business; he may be acting wholly outside the scope of his duties; he may have ceased to act in any way as a servant. His conduct may not pertain to or be a natural consequence of his duties or of the confidence reposed in him (*r*). It would be wholly unjust to throw upon the employer the responsibility for acts done in these circumstances. The two cases commonly quoted in illustration of this limitation are *McManus v. Crickett* (*s*) and *Croft v. Alison* (*t*). The evidence in the former case was that a servant of the defendant had wilfully driven a chariot against the plaintiff's chaise; and the Court held that an action of trespass did not lie against the master. In the latter, the facts were that the plaintiff's carriage became entangled with the defendant's through the negligence of the defendant's driver, and that the defendant's driver wantonly struck the plaintiff's horses with his whip, so that they started and injured the plaintiff's carriage. In these circumstances the defendant was held not liable. So, too, when a clerk to a firm of solicitors went contrary to orders into a lavatory intended exclusively for the use of one of the partners and allowed a tap to run, the defendants were held not to be liable for the damage done to the premises of the plaintiff (*u*). The same con-

(*r*) In Angell and Ames, on *Corporations* (8th ed.), s. 388, the rule is thus expressed: "When a servant quits sight of the object for which he is employed, and, without having in view his regular duties, pursues a course suggested by malice, he no longer acts in pursuance of the authority given him. The dividing line is the wilfulness of the act; and there is no case where the principal has been made liable for a wilful trespass committed by a servant, because commanded and approved by a general agent." The authors refer to *Vanderbilt v. Richmond Turnpike Co.*, 2 Const. 479. This statement, which is often substantially repeated, is too wide.

(*s*) (1800), 1 East, 106.

(*t*) (1821), 4 B. & Ald. 590. The Court drew the following distinction: "If a servant driving a carriage, in order to effect some purpose of his own, wantonly strike the horses of another person, and produce the accident, the master will not be liable. But if, in order to perform his master's orders, he strikes, but injudiciously, and in order

to extricate himself from a difficulty, that will be negligent and careless conduct, for which the master will be liable, being an act done in pursuance of the servant's employment." See also *Lamb v. Palk* (1840), 9 C. & P. 629. (A van standing at the door of A.'s shop from which goods were being removed. A.'s gig stood behind the van. B.'s coachman got off his box and laid hold of the van-horse's head. A packing-case fell from the van and broke the shafts of the gig: held by Gurney, B., that B. was not liable, as the coachman was not at the time acting in the service of B.) With *McManus v. Crickett* compare *Dalrymple v. McGill* (1813), Hume's Sc. Sess. Cas. 387. (A master not liable for act of servant, who, without orders, took a horse of a neighbour, and rode it so hard that the horse was permanently injured.) These cases seem inconsistent with *Limpus v. General Omnibus Co.*, and *Page v. Defries* (1866), 7 B. & S. 137.

(*u*) *Stevens v. Woodward* (1881), 6 Q. B. D. 318.

clusion was arrived at in *William v. Jones* (*x*), the facts of which were these: defendant's servant, a carpenter, was employed in making a signboard in plaintiff's shed. The carpenter, in lighting his pipe, negligently set fire to the shed. The master was not liable.

It is established by a long series of decisions that one of the tests to be applied is the question whether the particular act was done in protection of the master's property or not.

In *Allen v. The London and South-Western Ry. Co.* (*y*), a ticket clerk in the service of the defendants, erroneously suspecting that a person had attempted to rob the till, gave him into custody after the attempt. In an action for false imprisonment against the company, the plaintiff failed on the ground that the clerk had no authority to take steps to punish an offender.

"There is a marked distinction," said Blackburn, J., "between an act done for the purpose of protecting the property by preventing a felony or of recovering it back, and an act done for the purpose of punishing the offender for that which has already been done. There is no implied authority in a person having the custody of property to take such steps as he thinks fit to punish a person who he supposes has done something with reference to the property which he has not done. The act of punishing the offender is not anything done with reference to the property; it is done merely for the purpose of vindicating justice. . . . There is an implied authority to do all those things that are necessary for the protection of the property entrusted to a person, or for fulfilling the duty which a person has to perform."

So in *Edwards v. London and North-Western Ry. Co.* (*z*), it was decided by the Court of Common Pleas that a foreman porter had not from his position implied authority to give into custody a person reasonably suspected of stealing the company's property, though the porter happened to be in charge of the station at the time. The facts of *Walker v. South-Western Ry. Co.* (*a*) show the fineness of the distinctions upon which the Courts proceed. It was decided that the defendants were not answerable for the act of their servant, a constable, in giving the plaintiff into custody on a charge of assaulting the defendants' servants after a struggle was

(*x*) (1864-65), 3 H. & C. 602; Blackburn and Mellor, JJ., *dissent*.

(*y*) (1870), L. R. 6 Q. B. 65; *Abrahams v. Deakin*, [1891] 1 Q. B. 516. (Plaintiff, a customer at defendant's public-house, paid for his refreshment with a foreign coin; the barman returned it to plaintiff's friend, who gave an English coin in its place. The bar-

manager followed plaintiff into the street and gave him in custody. In an action for false imprisonment, defendant held not liable, as the servant had no authority to act as he did.) See *Sterens v. Hinshelwood* (1891), 55 J. P. 341; *Hanson v. Waller*, [1901] 1 K. B. 390.

(*z*) (1870), L. R. 5 C. P. 445.

(*a*) (1870), L. R. 5 C. P. 640.

over and when the plaintiff was walking quietly away. On the other hand, the Court thought it might be within the scope of the authority of a servant, who was a constable, to give into custody while a struggle was going on and before it was over, a person who, it was said, refused to quit the company's premises, or had assaulted the company's servants. In *Moore v. Metropolitan Ry. Co. (b)*, the company were held liable for the act of an inspector of one of their stations who gave plaintiff into custody on a charge of fraud, on the ground that the defendants were empowered under sect. 104 of their Act to arrest persons committing frauds under sect. 103, and that it might be presumed, in the absence of evidence to the contrary, that the inspector as representative of the defendants had authority to arrest. But where the company did not itself possess the power to do the act which the servant took upon himself to do, there was no liability (*c*).

The question has been considered in connection with the loss of passengers' luggage by railway porters. If the porter receives the luggage for the purposes of the transit, he receives it within the scope of his authority, and the railway company is under the liability of common carriers in respect of it (*d*); but if he receives it for safe keeping till the time of transit shall arrive (*d*), or while the passenger goes away for purposes of his own unconnected with the transit (*e*), the company is not liable. All these cases are applications—though not very obvious or perhaps consistent—of the principle stated by Blackburn, J., in *Allen v. London and South-Western Ry. Co. (f)*, and often acted on since, that “there is an

(*b*) (1872), L. R. 8 Q. B. 36. See also *Goff v. Great Northern Rail. Co.* (1861), L. R. 2 Q. B. 584; *Van den Eynde v. Ulster Rail. Co.* (1871), 5 Ir. C. L. 328.

(*c*) *Poulton v. London & S. W. Rail. Co.* (1867), L. R. 2 Q. B. 534; *Charleston v. London Tramways Co.* (1888), 4 Times L. R. 629.

(*d*) *Bunch v. Great Western Rail. Co.* (1886), 17 Q. B. D. 215; 13 A. C. 31. Whether it has been received “for the purposes of the transit” is a question of fact. In the House of Lords the opinion was expressed that with regard to luggage received by the porter to be carried in the carriage with the passenger, the company are common carriers, subject to this modification, that having regard to his interference with their exclusive control of his luggage, the company are not liable for any loss or injury occurring during its transit, to

which the act or default of the passenger has been contributory.

(*e*) *Welch v. London & N. W. Rail. Co.* (1886), 34 W. R. 166.

(*f*) (1870), L. R. 6 Q. B. 65, 69. Many decisions state that the test is whether the servant has “authority.” This term is the source of much confusion. It means either (1) express authority given by a principal to an agent; (2) conduct which would lead persons to believe an agreement was authorised by his principal; and (3) in regard to torts, acts which are incidental to and somehow connected with the duties of the agent or servant or are done in the course of his employment. A newspaper proprietor is at Common Law liable, as has been stated, for libels published by the negligence of a servant, even if the servant has been expressly told not to publish the particular libellous

implied authority to do all those things that are necessary for the protection of the property entrusted to a person, or for fulfilling the duty which a person has to perform.”

A master will be liable for the tortious acts of his servant when assuming to act for him if the master adopts or ratifies them.

This principle of the law of agency is thus stated in *Wilson v. Tammam (g)* :—

An act done for another by a person not assuming to act for himself but for such other person, though without any precedent authority whatever, becomes the act of the principal, if subsequently ratified by him, whether it be for his detriment or advantage, and whether it be founded on a tort or a contract, to the same extent and with all the consequences which follow from the same act if done by his previous authority.

The act must be done, or profess to be done, for and on behalf of the master (*h*). Where there is not authority in fact, an unavowed intention of acting on behalf of another is not enough (*i*). What is evidence of ratification is a question of fact. In order to make out ratification, there must be a knowledge of the fact to be ratified and an intention to ratify.

matter. A banker is liable for a fraud of a cashier, which is committed in some matter connected with his duties, even though the fraud be contrary to the wishes of the banker. It is only by straining language that we can say in such cases that a person had implied “authority” to do that which he was expressly forbidden to do. See *Bank of New South Wales v. Owenston*, L. R. 4 App. Cas. 270. It is, in fact, basing the master’s and employer’s liability on a legal fiction, to make it turn on a question of authority. The term has, no doubt, produced misconceptions. A whole class of dicta, now doubtful or overruled, may be traced to its use. “The liability of the master does not rest merely on the question of authority; because the authority given is generally to do the master’s business rightly; but the law says that if, in course of carrying out his employment, the servant

commits an excess beyond the scope of his authority, the master is liable.” Per Escher, M. R., in *Dyer v. Munday*, [1895] 1 Q. B. 742, 746.

A somewhat similar question arose in trials for embezzlements by servants under 39 Geo. III. c. 85. It was necessary to show that the servant had, “by virtue of such employment,” received or taken into possession the chattel which he was charged with misappropriating. See as to decisions under this section, *Rex v. Mellish* (1805), R. & R. 89; *Rex v. Smith* (1823), R. & R. 516; *Rex v. Beechey* (1817), R. & R. 319.

(*g*) (1843), 6 Scott, N. R. 894, 904. See *Eastern Counties Rail. Co. v. Broom* (1851), 6 Ex. 314; *Roe v. Birkenhead* (1851), 21 L. J. Ex. 90; 7 Ex. 36.

(*h*) *Wilson v. Barker* (1833), 4 B. & Ad. 616.

(*i*) *Keighley, Maxted & Co. v. Durant*, [1901] A. C. 240.

One who employs an independent contractor to execute a work incurs no liability (except in the cases mentioned below) for the acts of the contractor, or sub-contractor, or his servants.

This principle has been at length firmly established. But it was not at once adopted. There was for a long time a disposition to make persons who set on foot or ordered the execution of works liable for the negligent or other tortious acts of contractors (*k*). Now, however, it is well settled, subject to the exceptions hereafter stated, that an employer is not answerable for the conduct of a contractor, a sub-contractor, and their servants; and the only difficulty is in distinguishing in practice contractors from servants (*l*).

The defendants in *Peachey v. Rowland* (*m*), entered with two contractors into a contract, by which they agreed to construct a drain in the road in connexion with the houses of the defendants. The contractors employed A. to excavate and fill in the work. A. did this negligently, and the plaintiff was thereby injured. Yet the defendants were not liable; A. not being the servant of the defendants, and the contractors having been employed by them to do a lawful work. So, too, in the leading case of *Reedie v. The London and North-Western Ry. Co.* (*n*). The defendants engaged a contractor to construct a portion of their railway, but reserved the right to the company to dismiss any incompetent workman. Through the negligence of the workmen of the contractor, a stone fell upon the plaintiff's husband, who was passing under a bridge,

(*k*) Particularly in connection with the occupation of real property. See *Bush v. Steynman* (1799), 1 B. & P. 404. (A., who had a house by the wayside, engaged B. to repair it. B. contracted with C., and C. with D. to furnish the materials. The servant of D. placed a quantity of lime on the road, whereby plaintiff was injured. A. held answerable.) This case was questioned in *Gayford v. Nicholls* (1854), 9 Ex. 702, and disapproved of in many other cases. And see the judgment of Parke, B., in *Rapson v. Cubitt* (1842), 9 M. & W. 710, 714.

(*l*) See *Vamplew v. Parkgate Iron and Steel Co.*, [1903] 1 K. B. 851.

(*m*) (1853), 13 C. B. 182. No notice is taken in the judgment of the fact that one of the defendants saw the improper manner in which the work was being

done.

(*n*) (1849), 4 Ex. 244. See also *Knight v. Fox* (1850), 5 Ex. 721. (A. contracted with a railway company to complete a portion of their line. B. contracted with A. to erect a bridge. B. had in his service C., who acted as general servant of B., and as his surveyor. B. entered into a contract with C., by which the latter was to supply scaffolding for the bridge, the defendant, B., to provide the requisite materials and lights. One of the poles of the scaffolding improperly projected on the footway. In consequence of this, and owing to the want of sufficient light, D. was injured. No action by D. lay against B. The circumstance that C. was the general servant of B. did not the less make him a contractor in regard to the scaffolding.)

and killed him. The company were exonerated from liability. In another case, *Rapson v. Cubitt (o)*, the defendant, a builder, was employed by the committee of a club to do certain work, including the putting up of gas-fittings at a club-house. He made a sub-contract with a gasfitter to execute this part of the work. An explosion of gas took place by reason of the carelessness of the latter, and the plaintiff was injured. Yet no action lay against the defendant.

The following are the chief exceptions to the foregoing rule:—

(i) A person who employs a contractor to do work which is unlawful is liable for the acts of the contractor.

In such a case the contractor's acts are really his employer's. The latter has done just what he was ordered to do, and that which was ordered was itself wrong. A gas company, for example, entered into a contract with W., to open trenches and lay their mains in the streets of Sheffield. W. employed men to do the work. They left, in breach of a public duty, a heap of work and stones in such a position that the plaintiff fell over them and was injured. The company were responsible inasmuch as they had no right to make excavations in the streets (*p*). Distinguishing the case from *Peachey v. Rowland (q)*, *Overton v. Freeman (r)*, and other cases in which employers of contractors were exonerated, Lord Campbell observed:—

In these cases nothing was ordered except what the person giving the order had a right to order, and the contract was to do what was legal, and the employer was held properly not liable for what the contractor did negli-

(o) (1842), 9 M. & W. 710; *Milligan v. Wedge* (1840), 12 A. & E. 737. (The defendant, a butcher, employed a licensed drover to drive a bullock from Smithfield. The drover employed a boy, and, by the negligence of the latter, the plaintiff's property was injured; defendant not liable.) *Overton v. Freeman* (1852), 11 C. B. 867. (Defendants contracted with parish officers to pave certain streets, and entered into a sub-contract with W., who agreed to lay the curb-stone under the superintendence of the surveyor of the local commissioners. The stones were supplied by the defendants, and brought to the spot by them.

Some of them were placed in the pathway by workmen employed and paid by W. Plaintiff injured by falling over the stones; the defendants not liable.) *Cuthbertson v. Parsons* (1852), 12 C. B. 304; *Steel v. South-Eastern Rail. Co.* (1855), 16 C. B. 550; *Brown v. Acerington Cotton Co.* (1865), 3 H. & C. 511; *Taylor v. Greenhalgh* (1874), L. R. 9 Q. B. 487. For a clear statement of the law, see Bigelow, C. J., in *Sprout v. Hemmingway*, 14 Pick. Mass. 1.

(p) *Ellis v. Sheffield Gas Co.* (1853), 2 E. & B. 767.

(q) (1853), 13 C. B. 182.

(r) See note (o).

gently, the relation of master and servant not existing. But here the defendants employ a contractor to do that which was unlawful, and an act done in consequence of such employment is the cause of the injury for which the action is brought. It is simply the case of persons employing another to do an unlawful act, and a damage to the plaintiff from the doing of such unlawful act.

Sometimes the distinction is put in another way. It is said that, when the act which was ordered caused the injury, the person who gave the order is liable. When the cause of action is something casual or collateral, done in the course of the work, the responsibility rests with the contractor. The limits of this liability are not clear. Whether the occupant of real property becomes liable for the consequences of a stranger's tortious act, before he has notice, seems doubtful (s). If the contractor have done in an improper manner that which might well have been done in a proper manner, there is no redress against the person who set the contractor in motion. The owner of a house employed a builder to take down and reconstruct the front. The contractor removed a breast-summer inserted in a party-wall, without taking proper care to shore up the adjoining house. The employer was not bound to make good the damages. He had a right to suppose that the builder would take ordinary precautions (t).

(ii) A person who employs a contractor to execute work is liable for the non-performance of duties which the former is bound at Common Law or by Statute to fulfil.

This is scarcely distinguishable from the last class of cases.

In *Hardaker v. Idle District Council* (u), Lindley, L. J., expressed this principle in these words:—

But the council cannot, by employing a contractor, get rid of their own duty to other people, whatever that duty may be. If the contractor performs their duty for them, it is performed by them through him, and they are not

(s) *Silverton v. Marriott* (1888), 59 L. T. (N. S.) 61. And see the judgment of Blackburn, J., in *Tarry v. Ashton* (1876), 1 Q. B. D. 314, 319.

(t) *Butler v. Hunter* (1862), 7 H. & N. 826; see note (z), p. 253. *Hole v. Sittingbourne Rail. Co.* (1861), 2 E. & B. 767.

(u) [1896] 1 Q. B. 335, 340. (Defendants employed contractor to construct sewer; owing to his negligence in doing the work, a gas-main was fractured; gas escaped and exploded injuring the plaintiff; defendants held liable.) See *Holliday v. National Telephone Co.*, [1899] 2 Q. B. 392.

responsible for anything more. They are not responsible for his negligence in other respects, as they would be if he were their servant. Such negligence is sometimes called casual or collateral negligence. If, on the other hand, their contractor fails to do what it is their duty to do or get done, their duty is not performed, and they are responsible accordingly.

At Common Law there is a duty incumbent upon persons not to have their house or premises in such a state as to be a nuisance or to be dangerous to passers-by, and they will not be heard to say that they entrusted the performance of their duty to an independent contractor, and that they are not answerable for what has befallen travellers or passers-by. This is illustrated by *Pickard v. Smith* (x). A passenger by a railway train fell into the coal-cellar of a refreshment room at a railway station; the servants of a coal merchant had been putting coals into the cellar and had negligently left the trap-door open and unguarded. The lessee and occupant of the refreshment room was held liable to the plaintiff on the ground that the employment of an independent contractor did not absolve him from the duty of taking reasonable precautions to prevent mischief from the opening of the trap-door. The duty was incumbent upon the lessee, and he was liable for its non-fulfilment. For similar reasons, one who is bound by statute to perform certain duties cannot shield himself from responsibility by employing a competent contractor. His duty is to do the particular thing which the Legislature ordered—not merely to do his best to perform it. A company was authorised by a private Act of Parliament to construct a bridge which opened, and it was bound by the Act not to detain vessels navigating the river longer than was required to allow carriages, &c. to cross. A vessel having been delayed for a longer period owing to a defect in the construction of the bridge, it was held to be no defence to an action against the company that it had employed a competent contractor (y). The company had delegated their duty at their own risk.

(x) (1861), 10 C. B. N. S. 470; and compare *Nisbett v. Dixon* (1852), 14 D. 973, and *Grant v. West Calder Oil Co.* (1872), 9 S. L. R. 254. *Pickard v. Smith* is sometimes quoted as if reaffirming the principle stated in *Bush v. Steinman*. It is submitted that the principle of the former in no way peculiarly refers to real property.

(y) *Hole v. Sittingbourne Rail. Co.* (1861), 6 H. & N. 488. This is stated in some judgments to be in principle the same as *Ellis v. Sheffield Gas Co.*, already mentioned, but in the

latter case the thing to be done was illegal; in the former the manner of doing a lawful thing produced illegal results. In *Barham v. Ipswich Dock Commissioners* (1886), 51 L. T. 23, and *Howitt v. Nottingham Tramways Co.* (1883), 12 Q. B. D. 16, statutes relieved the defendants of liability for neglect of statutory duties. See also *Gray v. Pallen* (1864), 5 B. & S. 970. (Defendants being empowered under a Local Management Act to make a drain, employed a contractor, who failed to make good the pavement over the drain; held liable by

(iii) A person who employs a contractor to do work which is lawful, but which is dangerous, and is likely in the natural course of things, unless precaution be taken, to cause injury, is liable for the consequences of the contractor's failure to take that precaution.

This principle is really only an instance of the last. Its limits are far from clear. There are statements of great authority, according to which employers in such cases are in the position of insurers against damage. In *Bower v. Peate* (z) the plaintiff and defendant were owners of adjoining houses, and the plaintiff was entitled to the support of the defendant's land for his house. The defendant employed a contractor to pull down his house, excavate the foundations of it, and rebuild it. The contractor undertook the risk of supporting the plaintiff's house, as far as might be necessary during the work, and to make good any damage and satisfy any claims arising therefrom. The means taken by the contractor to support the house were insufficient; it was injured, and the defendant was held liable. Cockburn, C. J., in delivering the judgment of the Court (a), said:—

A man who orders a work to be executed, from which, in the natural course of things, injurious consequences to his neighbour must be expected to arise, unless means are adopted by which such consequences may be prevented, is bound to see to the doing of that which is necessary to prevent the mischief, and cannot relieve himself of his responsibility by employing someone else—whether it be the contractor employed to do the work from which the danger arises, or some independent person—to do what is necessary to prevent the act he has ordered to be done from becoming wrongful. There is an obvious difference between committing work to a contractor to be executed from which, if properly done, no injurious consequences can arise, and handing over to him work to be done from which mischievous consequences will arise, unless preventive measures are adopted. While it may be just to hold the party authorising the work in the former case exempt from liability for injury, resulting from negligence which he had no reason to anticipate, *there is*, on the other hand, *good ground for holding him liable* for injury caused by an act certain to be attended with

Exchequer Chamber, reversing judgment of Blackburn, J., at the trial and the Court of Queen's Bench.) *Hyams v. Webster* (1867), 36 L. J. Q. B. 166; Wood on *Master and Servant*, 626.

(z) (1876), 1 Q. B. D. 321. *Butler v. Hunter* (1862), 7 H. & N. 826, cannot be reconciled with *Bower v. Peate*, and, as

a decision on the facts, which are indistinguishable from those in *Bower v. Peate*, must, it is submitted, be considered overruled. Lord Blackburn took occasion both in *Dalton v. Angus* and *Hughes v. Percival* to doubt it.

(a) *l. c.* at pp. 326, 327.

injurious consequences *if such consequences are not in fact prevented*, no matter through whose default the omission to take the necessary measures for such prevention may arise.

This is simply the rule in *Fletcher v. Rylands (b)*: the employer authorises such work at his peril; he insures his neighbour against damage arising therefrom. The point was again considered in *Hughes v. Percival (c)* on very similar facts. In that case the defendant employed a competent contractor to rebuild his house which adjoined the plaintiff's; the contractor's workmen, without the defendant's knowledge, cut into the party-wall to fix a staircase, whereby the plaintiff's house fell: the defendant was held liable on the ground of negligence. Lord Blackburn, in the course of his judgment, said *(d)*:—

The defendant had a right so to utilise the party-wall, for it was his property as well as the plaintiff's; a stranger would not have had such a right. But I think the law cast upon the defendant, when exercising this right, a duty towards the plaintiff. I do not think that duty went so far as to require him absolutely to provide that no damage should come to the plaintiff's wall from the use he thus made of it, but I think that the duty went as far as to require him to see that reasonable skill and care were exercised in those operations which involved a use of the party-wall, exposing it to this risk. If such a duty was cast upon the defendant, he could not get rid of responsibility by delegating the performance of it to a third person.

Lord Fitzgerald, in the same case *(c)*, lays it down that the liability is not as an insurer against injury, but for the consequences of even *culpa levissima*. In this view, which Lord Blackburn also enunciated in *Dalton v. Angus (f)*, negligence is the ground of liability in such cases, and the only materiality of the "dangerous" character of the work is that it imposes a duty upon the person authorising the work, of which he does not relieve himself by appointing a competent contractor to carry it out, or by stipulating for precautions in the contract. Lord Watson appears to have taken the same view *(g)* in *Dalton v. Angus*; but he goes further in *Hughes v. Percival (c)*.

It appears to me that the defendant could not escape from liability unless he further proved that it could not have been reasonably anticipated that

(b) (1868), L. R. 3 H. L. 330.

(c) (1883), 8 A. C. 413.

(d) *l. c.* at pp. 445, 446.

(e) *l. c.* at p. 455.

(f) (1881), 6 A. C. 740, 746.

(g) *l. c.* at pp. 831, 832.

any workman of ordinary skill in such operations, who was neither insane nor dishonest, would have dreamt of cutting the wall (*h*).

In other words, the defendant had to show that it was practically impossible for him to foresee or prevent the operation on the wall. But this has nothing to do with negligence. It is the same ground of non-liability as Bramwell, B., assigns in *Nichols v. Marsland* (*i*), where there was, admittedly, no question of negligence. For the purpose of exculpating the defendant, Lord Watson's insane or dishonest workman plays the same part as "the mischievous boy who bores a hole in a cistern" in *Nichols v. Marsland* (*i*). It is submitted that this goes too far and that the true principle is that laid down in *Hughes v. Percival* by Lord Blackburn. It is certainly the principle that has been followed in the more recent cases. In *Penny v. Wimbledon Urban District Council* (*k*) the defendants employed a contractor to repair a road; the contractor left a heap of soil unlighted in the road; the plaintiff fell over the heap and injured herself. Romer, L. J., said (*l*):—

When a person, through a contractor, does work which from its nature is likely to cause danger to others, there is a duty on his part to take all reasonable precaution against such danger, and he does not escape from liability for the discharge of that duty by employing the contractor if the latter does not take these precautions.

In *Hardaker v. Idle District Council* (*m*) it is somewhat difficult to understand the exact grounds of the judgments; but they all expressly adopt Lord Blackburn's statement of the law in *Dutton v. Angus* (*n*). The ground of liability in this case was that, no precautions having been taken by the contractor to discharge the duty incumbent on the defendants, the defendants remained liable. Lindley, L. J. (*o*), certainly appears to think that had it been a case, not of failure by the contractor to take precautions, but of his carrying out the precautions in a careless way, the defendants would not have been liable;—an empty distinction, if the defendants authorised the work at their peril and were insurers against damage.

In *Holliday v. National Telephone Co.* (*p*) the defendants, who

(*h*) *l. c.* at p. 451.

(*i*) (1875), L. R. 10 Ex. 255; 2 Ex.

D. 1.

(*k*) [1898] 2 Q. B. 212; [1899] 2 Q. B. 72.

(*l*) *l. c.* at p. 78.

(*m*) [1896] 1 Q. B. 335; *The Snark*, [1899] P. 74 (failure by contractor to

warn vessels of position of wreck belonging to defendants).

(*n*) (1881), 6 A. C. 740, 746.

(*o*) *l. c.* at pp. 342, 343.

(*p*) [1899] 2 Q. B. 392; *Lemaître v. Davis* (1881), 19 Ch. D. 281 (withdrawal of support); *Black v. Christchurch Finance Co.*, [1894] A. C. 48 (fire lighted

were laying wires in a highway, were held liable on the ground that "they are bound, whether they do the work by themselves or a contractor, to take care that the public lawfully using the highway are protected against any act of negligence by a person acting for them in the execution of the works" (*q*). This, it must be admitted, is very little short of an absolute warranty against injury; but the judgments are avowedly based upon the policy of securing the safety of the public using a highway.

As has been said, the insertion in the contract of stipulations as to the precautions to be taken does not relieve the employer of responsibility (*r*).

But for negligence of the contractor himself or of his servants, which does not consist in non-observance of the duty incumbent on the employer, the employer is not liable. This is sometimes called casual or collateral negligence (*s*). Failure to properly maintain gas-pipes when constructing a sewer (*t*); failure to light a heap of soil when making up a road (*u*); plunging a defective lamp into molten solder to get a flare, so as to join pipes which carried telephone wires in the course of being laid (*v*)—these are all instances where the Courts rejected the plea that the negligence was collateral. This immunity does not exist in cases of master and servant. What is "dangerous" work within the meaning of this rule? No general answer can be given. It depends on the facts of each case. The work may be intrinsically dangerous, *e.g.*, cutting into a party wall (*w*), or lighting a fire on open bush-land near inflammable materials (*x*); or it may become so by reason of the circumstances of time, place, &c., in which it is carried out, *e.g.*, the suspension of a lamp over a highway (*y*); the digging of a drain under a pavement (*z*) or under gas-pipes (*a*).

on open bush land): in all these cases the employer of the contractor was held liable.

(*q*) Per Halsbury, L. C., *ibid.*, pp. 398, 399.

(*r*) See Lord Blackburn's judgment in *Dalton v. Angus*, *l. c.* at p. 829; Lord Watson's judgment in *Hughes v. Pereirai*, *l. c.* at pp. 450, 451; *Black v. Christchurch Finance Co.*, [1894] A. C. 48.

(*s*) See per Lord Blackburn in *Dalton v. Angus*, *l. c.* at p. 829; per Lindley, L. J., in *Hardaker v. Idle District Council*, [1896] 1 Q. B. at p. 340.

(*t*) *Hardaker v. Idle District Council*, [1896] 1 Q. B. 335, where Lindley, L. J., discusses all the cases; *Gray v. Pullen*: see note (*y*), p. 252, *supra*.

(*u*) *Penny v. Wimbledon Urban District Council*, [1899] 2 Q. B. 72, where the leaving of a pickaxe by a contractor's workman in the road is given as an illustration of collateral negligence by A. L. Smith, L. J.

(*v*) *Holliday v. National Telephone Co.*, [1899] 2 Q. B. 392.

(*w*) *Hughes v. Pereirai* (1883), 8 A. C. 443.

(*x*) *Black v. Christchurch Finance Co.*, [1894] A. C. 48.

(*y*) *Tarry v. Ashton* (1876), 1 Q. B. D. 314.

(*z*) *Gray v. Pullen* (1864), 5 B. & S. 970.

(*a*) *Hardaker v. Idle District Council*, [1896] 1 Q. B. 335.

In *Bower v. Peate* (b), Cockburn, C. J., used the phrase "work from which, in the natural course of things, injurious consequences to his neighbour must be expected to arise, unless means are adopted by which such consequences may be prevented." Lord Blackburn criticised this statement (c) as too wide, as it would include the case of a person who hired post-horses and a coachman from an inn. On that point A. L. Smith, L. J., said (d) :—

It seems to me that it is not, in the natural course of things, to be expected, when a man hires post-horses and a coachman from an innkeeper, that, unless means are adopted to prevent them, injurious consequences will arise to his neighbours. In such a case, in the ordinary course of events, no injuries would occur to any one. The coachman would drive, and the hirer would ride in the carriage, and, in the ordinary course, the transit would come to an end without injury to anyone.

It is submitted that this test is no more difficult to apply than any other which consists in a question of fact, to be answered by reference to common usage and the ordinary course of events.

(iv) A person who employs an independent contractor to execute work is liable for the wrongful acts of the contractor if he has the right to control and interfere with the persons executing the work.

Of course actual interference will create liability; but it is submitted that actual interference and control is not necessary, and that the right is enough. Bramwell, L. J., thus deals with the point :—

To my mind, the distinction of the cases where a man is, and where he is not, liable for the negligence of another person, may be defined in this way. If there is a contract between them, so that the person doing the work, or doing the act complained of, has a right to say to the employer, "I will agree to do it, but I shall do it after my own fashion; I shall begin the wall at this end and not at the other;" there the relation of master and servant does not exist, and the employer is not liable. But if the employer has a right to say to the person employed "You shall do it in this way, that is to say, not only shall you do it by virtue of your agreement with me, but you shall do it as I direct you to do it;" then the law of master and servant applies, and the master is responsible (e).

(b) (1876), 1 Q. B. D. 321.

(c) *Hughes v. Percival*, l. c. p. 447.

(d) *Hardaker v. Idle District Council*, l. c. at p. 347.

(e) Evidence before the Employers' Liability Commission, 1876: Report (1877), p. 58.

And Sir F. Pollock speaks in a similar sense :—

It is proper to add that the "power of controlling the work," which is the legal criterion of the relation of a master to a servant, does not necessarily mean a present and physical ability. . . . It is enough that the servant is bound to obey the master's decisions if and when communicated to him. The legal power of control is to actual supervision what in the doctrine of possession the intent to possess is to physical detention (*f*).

So in *Hardaker v. Idle District Council* (*g*), Rigby, L. J., thought that the rights reserved under the contract made the contractor the servant of the council, as did Bruce, J., in the case of another very similar contract (*h*). In *Burgess v. Gray* (*i*) the facts were these: A. employed B. to make a drain to communicate with the common sewer. B.'s servant left a heap of gravel on the highway, and the plaintiff was thereby injured. Before the accident, A. had been informed that the heap was dangerous, and had promised to remove it. It also appeared that B. had charged A. a certain rate per load for the removal of the gravel; in these circumstances the Court thought that there was evidence that A. had not abandoned the entire control of the work, and that he was consequently responsible to the plaintiff. In another case a person had hired for the day a carriage. According to the decision in *Laugher v. Pointer* (*k*), he would not be responsible for the acts of the postilions, who were the servants of the owner. But having interfered with them, he was held responsible (*l*). In many cases of this character the question has been: was the negligent person

(*f*) *Law of Torts* (5th ed.), 78.

(*g*) [1896] 1 Q. B. 335, 352, 353.

(*h*) *Penny v. Wimbledon Urban Council*, [1898] 2 Q. B. 212, 216. See the discussion of the question of "control" and liability for the acts of borrowed servants, at pp. 15 *et seq.*, *supra*.

(*i*) (1845), 1 C. B. 578. See also *Blake v. Thirst* (1863), 2 H. & C. 20. (Defendant, a builder, contracted with local commissioners to make a sewer, and underlet to N. the excavation and the brickwork at a fixed price per yard; N. employed his own men, but defendant had the right of dismissing them. In consequence of N.'s negligence to provide a sufficient light, plaintiff fell into an unfenced track; *held*, that defendant was liable: but see remarks of Martin, B.) See also *Stephen v. Thurso Police Commissioners* (1876), 3 R. 535; *Sadler v. Henlock* (1855), 4 E. & B. 570.

(*k*) (1826), 5 B. & C. 547; *Jones v. Corporation of Liverpool* (1885), 14 Q. B. D.

890. (Horse and driver hired for defendant's water cart from contractor; defendant's inspector pointed out streets to be watered; defendants not liable.) *Shiells v. Edinburgh and Glasgow Rail. Co.* (1856), 18 F. 1199. (Defendants provided cart, a contractor the horse and driver; defendants not liable.)

(*l*) *McLaughlin v. Pryor* (1842), 4 M. & G. 48; *Smith v. Lawrence* (1828), 2 M. & R. 1; *Brady v. Giles* (1835), 1 Mood. & Ro. 491. The last case cannot be regarded as a subsisting authority. See also *Randleson v. Murray* (1838), 8 A. & E. 109. (A warehouseman employed a master porter to remove a barrel from his warehouse; the master porter employed his own men and tackle, and, through the negligence of the men, the barrel fell and injured the plaintiff; *held*, that the warehouseman was liable.) This case has often been questioned: *Murphey v. Caralli* (1864), 3 H. & C. 462.

the servant of the defendant? But interference or control short of that involving the relations of master and servant is enough to fix liability.

If the hirer actively interferes with the driving, and injury occurs to any one, the hirer may be liable, not as a master, but as the procurer and cause of the wrongful act complained of (*n*).

It has already been stated with reference to *Laugher v. Pointer*, that persons who hire a carriage and servant do not thereby become responsible for the acts of the servant; he remains the servant of the owner. In like manner the owners of ships have been held liable for the wrongful acts of their servants, even though at the time the injury was committed the vessel was chartered or hired by some other person. Thus in *Dalyell v. Tyrer* (*n*), the lessee of a ferry hired for a day a steam-tug with its crew from the defendants; the plaintiff, who was a passenger on board the tug, was injured by the breaking of a rope, owing to the negligence of the crew in mooring the tug. It was held that the crew remained the servants of the defendants, and that they were answerable.

A person is not liable for the acts of those whom he has not chosen to serve him, and whose services he is bound by statute or otherwise to accept.

This is exemplified in regard to pilots. Ship-owners being bound by statute in certain circumstances to take them on board and give them the charge of their ships, are not in such cases made to suffer for a pilot's mistakes or carelessness (*o*). It is

(*m*) Per Bowen, L. J., in *Donovan v. Laing, &c.*, [1893] 1 Q. B. 629, 634; *Ruth v. Surrey Dock Co.* (1891), 8 Times L. R. 116.

(*n*) (1858), E. B. & E. 899. See *Baumwoll v. Furness*, [1893] A. C. 8, 17 (per Lord Herschell): "Not a single authority has been cited in which the owner of a vessel has ever been held liable on a bill of lading or as for a tort in any case, in which the master of the vessel, or those who were guilty of the negligence, have not been properly described as the servants of the owner."

(*o*) *Lucey v. Ingram* (1840), 6 M. & W. 302. (Owner not liable when ship under

conduct of a licensed pilot. This case turned chiefly on 6 Geo. IV. c. 125. "The master, however well qualified to conduct the ship himself, is bound, under a penalty, in a great measure to divest himself of its control, and to give up the charge to the pilot. As a necessary consequence the master and owners are exempted from responsibility for acts resulting from the mismanagement of the pilot.") *General Steam Navigation Co. v. British and Colonial Steam Navigation Co.* (1868), L. R. 3 Ex. 330; (1869), L. R. 4 Ex. 238. The main question here was, whether the employment of the pilot was compulsory at the

sometimes a question of difficulty to know when the employment of a pilot is imperative and when such duty ceases; but if a vessel be under the care of a compulsory pilot he is not regarded as the servant of the owner. Indeed, sect. 633 of the Merchant Shipping Act, 1894, expressly declares:—

An owner or a master of a ship shall not be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of that ship, within any district where the employment of a qualified pilot is compulsory by law.

In like manner the captain of a man-of-war is not accountable for the acts of his officers (*p*). So, too, as explained in *Stone v. Cartwright* (*q*), a bailiff, steward, or manager is not liable for the acts of the servants whom he appoints.

In *Quarman v. Burnett* (*r*), it is observed by Parke, B.:—

The liability by virtue of the principle of relation of master and servant must cease where the relation itself ceases to exist; and no other person than the master of such servant can be liable, on the simple ground that the servant is the servant of another, and his act the act of another; consequently, a third person entering into a contract with a master, which does not raise the relation of master and servant at all, is not thereby rendered liable.

Such expressions, however, must not be understood to interfere with the general rule that principals are answerable for the acts of their agents within the scope of their employment. Thus litigants may be liable for the acts of their solicitors in the course of litigation (*s*), and merchants for the conduct of their factors or

spot where the collision took place. The Court took the view that whether that were so or not, in the circumstances the owners were not liable. This decision was followed in *The Charlton* (1895), 73 L. T. (N. S.) 49. See also *Ritchie v. Bowfield* (1817), 7 Taunt. 309; *The Stettin* (1863), Br. & Lush. 199; *The Iona* (1867), L. R. 1 P. C. 426; *The Velasquez* (1867), L. R. 1 P. C. 494. Somewhat inconsistently, the owner has sometimes been regarded as liable for the contributory negligence of the pilot. See judgment of Lord Blackburn in *Spaight v. Tedcastle* (1881), L. R. 6 A. C. 217. It is to be observed that the exemption does not apply when the pilot has to be selected out of a limited class: *Martin v. Temperley* (1843), 4 Q. B. 298; and see also *The Guy Mon-*

nering (1882), L. R. 7 P. D. 52 and 132; *The Prins Hendrik*, [1899] P. 177, cases in which the pilot had not control of the navigation. In *The Schwan*; *The Albano*, [1892] P. 419, the evidence was that a defective look-out helped to cause the accident; therefore the owners were held liable.

(*p*) *Nicholson v. Mounsey* (1838), 15 East, 384; but see as to liability of master of a merchant ship, who is for some purposes regarded as owner, *Maude and Pollock* (4th ed.) i. 155; *Story on Agency*, sect. 317.

(*q*) (1795), 6 T. R. 411.

(*r*) (1840), 6 M. & W. 499, 509; *Stone v. Cartwright* (1795), 6 T. R. 411.

(*s*) *Collett v. Foster* (1857), 2 H. & N. 356; and compare *Smith v. Keal* (1882), 9 Q. B. D. 340.

agents (*t*). The responsibility of masters is but an application of a general rule (*u*).

Masters are liable to third persons for the consequences of negligence in employing incompetent servants.

This question has usually arisen in actions brought by servants against masters when the defence of common employment is in question. It may, however, arise otherwise: being liable to employees who suffer from their negligence or recklessness in employing men who have no skill, masters are not less liable to strangers (*x*).

(*t*) *Grammar v. Nixon* (1725), 1 Str. 653; *Hern v. Nichols* (1701), 1 Salk. 289; on the other hand, *Lucas v. Mason* (1875), L. R. 10 Ex. 251.

(*u*) As to this point, see *Haseler v. Lemoyne* (1858), 28 L. J. C. P. 103; remarks of Bramwell, B., at p. 344, in *Udell v. Atherton* (1861), 30 L. J. Ex.; Lindley on *Partnership*, 6th ed., 158; Wharton on *Agency*, sect. 19; Story on *Agency*, sect. 308, and Mr. Green's note to sect. 451. Probably the correct view is that the servant is one kind of agent, the extent of whose authority is to be inferred from the nature of his employment.

(*x*) *Wilson v. Merry* (1868), L. R. 1 S. & D. 326. If a master negligently suffered a volunteer, who was incompetent, to engage in his work, and some one was thereby injured, no doubt the master would be liable. In *Wanstall v. Pooley* (1841), 6 C. & F. 910, n., the Queen's Bench decided that a corn-factor, whose business was managed in his absence by his sister, was liable for the negligence of a tipsy servant, whom she had sent with corn to a customer. See also *Wheatley v. Patrick* (1837), 3 M. & W. 650. In his *Leading Cases*, p. 657, Mr. Bigelow observes that "a servant who merely hires labourers for the performance of the master's work is not in the situation of a sub-contractor, and cannot be held liable for damages caused by the negligence of such labourers:" he thinks an action would lie against the master. Addison, *Torts*, 116 (7th ed.); *Stone v. Cartwright* (1795), 6 T. R. 411; *Wilson v. Peto* (1821), 6 Moore, C. P. 47. See *Wright v. Leth-*

bridge (1891), 63 L. T. (N. S.) 572. It has, in fact, been broadly laid down that, if a servant employs another person to do his work, or assist him therein, the master is liable for an injury resulting from such person's acts (*Wood*, 588). No doubt, in *Booth v. Mister* (1835), 7 C. & P. 66, an action for injuries by the driver of a cart—the evidence being that the defendant's servant was in the cart, but that a person not his servant was driving—Abinger, C.J., ruled that it was the same as if the defendant's servant had driven. But he reserved the point, and it was never argued. If the evidence had been that the servant knew nothing of the driver, or that he knew him to be inefficient as a driver, the master would be liable on the principle of *Engelhart v. Farrant*, [1897] 1 Q. B. 240, viz., that the servant's negligence was the "effective cause" of the injury. In *Althorpe v. Wolfe* (1860), 8 Sm. N. Y. 355, the defendant had set his servant to shovel snow and ice off the roof of a house. The servant procured the assistance of A. B. was injured by the fall of the ice; it did not appear whether the ice was thrown by the servant or A.; the defendant held responsible (two judges dissenting). One of the judges based his decision on the ground that the servant was entitled to procure aid. It is submitted that the point ought to turn on the question whether he was acting within the scope of his authority in employing A. See on this point the remarks of A. L. Smith, L. J., in *Gwilliam v. Twist*, [1895] 2 Q. B. at p. 88.

Public officers under Government are not responsible for torts committed by their subordinates.

Thus in the well-known case of *Lane v. Cotton* (*y*), the Postmaster-General, it was held, incurred no responsibility for the loss of letters in the office by reason of the negligence of an inferior officer; and in *Whitfield v. Lord le Despencer* (*z*), decided in 1778, it was held that case did not lie against the Postmaster-General for a bank note which was stolen by one of the sorters out of a letter put into the Post Office; inasmuch as the relation of master and servant does not subsist between the head of a Government department and his subordinates. Nor have the Telegraph Acts, 1863 and 1868, made any change in the Postmaster-General's position in that respect (*a*). The principles upon which a master or employer is held answerable for the acts of servants do not apply to the Crown.

If the master or employer is answerable upon the principle that *qui facit per alium facit per se*, this would not apply to the sovereign, who cannot be required to answer for his own personal acts. If it be said that the master is answerable for the negligence of his servant, because it may be considered to have arisen from his own misconduct or negligence in selecting or retaining a careless servant, that principle cannot apply to the sovereign, to whom negligence or misconduct cannot be imputed, and for which, if they occur in fact, the law affords no remedy (*b*).

Sometimes the Legislature has expressly relieved Government officials from liability for the acts of their subordinates. See as to this, *O'Grady v. Cardwell*, in which the defendant, Secretary of State for War, was held not personally liable in an action for breach of a contract entered into by him on behalf of the War Department (*c*).

(*y*) (1701), 1 Lord Raym. 646; 12 Mod. 473.

(*z*) Cowper, 754; *Nicholson v. Mouneey* (1812), 15 East, 384. See Story on Agency, 319.

(*a*) *Bainbridge v. The Postmaster-General*, [1906] 1 K. B. 178.

(*b*) *Canterbury v. Attorney-General* (1843), 1 Phill. 306. (Petition of right against the Crown by the Speaker of House of Commons for loss of furniture, plate, pictures, by a fire alleged to have been caused by the negligence of servants of the Commissioners of Woods and Forests.) See *Furnell v. Bowman* (1887), 12 A. C. 643; *Att.-Gen. of Straits Settlements v. Wemyss* (1888), 13 A. C. 192. In *Gilbert v. Corporation of Trinity*

House (1886), 17 Q. B. D. 795, which was an action for damages for negligence, it was held that the defendants were not servants of the Crown so as to be exempted from liability to such an action. As to the liability of a sheriff for the acts of a bailiff, see *Wood v. Finnis* (1852), 7 Ex. 363; and 51 & 52 Vict. c. 43 (County Courts Act, 1888), s. 35, as to the liability of a high bailiff for the acts of his bailiffs. And see sects. 52, 54 and 55 of the same Act.

(*c*) (1873), 21 W. R. 340. See *Kirk v. The Queen* (1872), 14 Q. B. D. 558, where there was a motion for an injunction by a suppliant under a petition of right against the Secretary of State for War.

This exemption does not extend, as was held in *Sutton v. Clarke* (*d*) and *Hall v. Smith* (*e*), and other cases, to trustees and other bodies which perform statutory duties, and the profits of which are appropriated to public purposes (*f*), or levied for their own profit (*g*). But where there were no tolls leviable, and the powers under the statute, for the neglect of which the defendants were sued, were purely discretionary, there was held to be no liability (*h*).

A master is not liable for injuries caused by his servant's negligence if they might have been avoided by reasonable care on the part of the person injured.

What constitutes such contributory negligence as will disentitle a plaintiff to recover is a question which does not belong exclusively to the Law of Master and Servant, and it need not here be discussed (*i*).

(*d*) (1815), 1 Marsh. 429.

(*e*) (1824), 2 Bing. 156.

(*f*) *Mersey Dock Trustees v. Gibbs* (1866), L. R. 1 H. L. 93.

(*g*) *Parnaby v. Lancaster Canal Co.* (1839), 11 A. & E. 223.

(*h*) *Forbes v. Lee Conservancy Board* (1879), 4 Ex. D. 116. See *Cow v. Wise* (1864), 5 B. & S. 440.

(*i*) *Lax v. Darlington* (1879), 5 Ex. D. 28; *Ellis v. London & South Western Rail. Co.* (1857), 2 H. & N. 424; *Smith v. South Eastern Rail. Co.*, [1896] 1 Q. B. 178. See Beven's *Negligence in Law* (2nd ed.), Bk. I. ch. v; and ch. xxvi, *infra*, at p. 304; and the notes on the Employers' Liability Act, 1880, in pt. ii.

APPENDIX A.

Note on the history of a master's liability for his servant's torts.

It is sometimes said that the present law as to the liability of a master for the torts of his servants is a relic of the time when services were performed, as a rule, by slaves or villeins who were the property of their masters, and for whose acts they were naturally held responsible. This plausible view is not borne out by the authorities. No clear trace of the modern doctrine is to be found in early authorities, such as Bracton. One of the few passages in his treatise bearing on the subject is the following (*de Corona*, f. 158), where, discussing wrongs committed by servants, he puts this case: "But what if the servant of any one, in the absence of his lord, has seized the cattle of any tenant of his lord, and the tenant himself complains concerning the servant that he has seized his cattle unjustly, and detained them against bail

and surety, and that servant has called the Court of his lord to warrant, and the Court has warranted to him concerning the service? The servant shall be released and the Court shall answer for his own act. But cannot the Court answer without the lord, when the service touches the lord himself? Yes, so that the judgment be amended. But if the cattle be seized without a judgment of the Court, and have been claimed by the lord himself when he was present, and he himself has refused them on bail and not surety, each shall be liable, as it appears, the one for the seizure and the other for the refusal of release. And although his lord himself has avowed the seizure of his servant, he does not acquit the servant but he charges himself, and each is liable for the act of the servant, the servant because he seized it, and the lord doubly, because he avows the act of his servant, and because he refuses (the release of the thing seized)." "Likewise, let it be, that nothing has been done by the Court, nor by the lord of the Court, but only by the servant, as if the servant without the lord or without the Court, has levied a tax upon the tenants of his lord as villeins who are free, or who say that they are perchance, when they are serfs, and afterwards, when he has of his own authority made a distress, and the cattle upon the complaint of the tenant have been released by the viscount upon bail and surety, and a complaint has been made only respecting the servant without the lord, it is asked whether the servant can or ought to answer without the lord, and to bring the case to judgment without him? In which case, it will have to be inquired from the lord, whether he will avow the act of his servants or not, but if not, then the lord may amend it, but if he has avowed, or not amended it, he makes the injury his own, if there has been any injury." Neither in that passage nor any other, as far as I know, in Bracton, is there anything to show that a master was regarded as liable for the conduct of his vassal when acting without orders. Apparently the master was liable for the acts of his vassals when he had ratified them, or what is the same, had availed himself of what was done or refused to release what had been seized by them. I am not aware of any case in the *Year Books*, or any passage in Ploeden's Reports, Rastell, or Fitzherbert, which clearly lays down the doctrine now accepted. No doubt, instances are to be found in which actions were brought (for example, *Bealieu v. Finglam*, 2 H. IV., fol. 18, pl. 6), against masters for the acts of their servants on a custom of the realm. Thus a person was held answerable for the spread of fire when it was due to his guest or servant, Cowell's *Institutes*, 207; and actions on the case lay against innkeepers for the loss of goods by their servants. That the law was not understood as it is now will be seen from the following citations from Rolle's Abridg., *Action on Case*, 95: "If a servant, who is my merchant, sells an unsound horse or other chattel at a fair to a man, no action lies against the master for the deceit, for he did not command the servant to sell this to any one in particular;" 9 Hen. VI., 53. But if the servant by direction and contrivance of the master, sells to any particular man, if it proves unsound, an action lies against the master, for it is his sale. If the servant of a tavern-keeper sells wine to another, which is corrupt, action lies against the master, although he did not tell the servant to sell to the particular man: *Southern v. How*, Cro. Jac., 468. See Noy's *Maxims*, c. xlv.

Other authorities might be cited to show that a master was not supposed to be liable if a servant abused his authority. Thus Popham, C. J., lays it down in *Waltham v. Mulgar*, Moore, 776 (3 James I.), that "where a master sends his servant to do an unlawful act he shall answer for him if he made a mistake in doing the act. But where he sent him to do a lawful act as here to take the goods of the enemies of the king, and he takes the goods of a friend, the master shall not answer. If a master send his servant to market to buy or sell, and he rob or kill by the way, the master shall not answer, but if he sent him to beat one, and he kill or mistake the person and kill another, the master is a murderer." Dodderidge argued that the master was answerable in all public matters. In this case the question was whether the owner of a vessel with letters of marque to seize Spanish ships was responsible to the subjects of a friendly State whose ship had been wrongfully taken. It

does not appear to have been contended, as of course would be done in such circumstances in the present day, that a master as a general rule was liable for the acts of his servants in their employment. The sole contention was that the master was liable in all public matters. As late as the time of Charles II. the modern doctrine was virtually denied in *Kingston v. Booth* (1683), Skinner, 228, where three justices of the King's Bench laid down the following rule:—"If I command my servant to do what is lawful, and he misbehave himself, or do more, I shall not answer for my servant, but my servant for himself, for that it was his own act; otherwise it was in the power of every servant to subject his master to what actions or penalties he pleased. Thirdly, if I command my servant to do a lawful act, as in this case, to pull down a little wooden house (wherein the plaintiff was and would not come out, and which was carried upon wheels into the house to trick the defendant out of possession) and bid them take care they hurt not the plaintiff; if in this doing my servant wound the plaintiff, in trespass and assault of wounding brought against me, I may plead 'not guilty,' and give this in evidence, for that I was not guilty of the wounding; and the pulling down the house was a lawful act."

The *Doctor and Student* (published 1518), at p. 237, recognises the distinction between sale to a particular person and sale generally. See also Noy's *Maxims* (published 1641), where it is said at p. 95, c. xlv, "If a servant keeps his master's fire negligently, an action lies against the master; otherwise, if he carry it negligently in the street. If I command my servant to distrain, and he ride on the horse taken for the distress, he shall be punished, not I. If a man command his servant to sell a thing which is defective generally to whom he can sell it, deceit lies not against him; otherwise if he bid him sell it to such a man, it does." The doctrine stated in the text is usually said to have been first laid down in *Michael v. Alestree* (1677), 2 Lev. 172, 3 Keb. 650, an action on the case against a master and servant for bringing horses to train in Lincoln's Inn Fields, whereby the plaintiff was injured. Judgment was given for the plaintiff. "It shall be intended the master sent the servant to train the horses there." In the report in Ventris (i. 295), no mention is made of this point or indeed of the action being against the master, and in the report in Keble the master's liability is apparently justified by the fact that he ordered the horses to be brought to an open public place.

The modern doctrine was more clearly affirmed by Holt, C. J., in *Turberville v. Stamp*, Comb. 459, 1 Salk. 13, 1d. Raym. 264, in 1697, decided only a few years after *Kingston v. Booth*, already mentioned—which was an action against a person for allowing fire to extend beyond his close. Holt, C. J., observed, "Though I am not bound by the act of a stranger in any case, yet if my servant doth anything prejudicial to another, it shall bind me, where it may be presumed that he acts by my authority, being about my business." The same view was taken in *Middleton v. Fowler* (1699), 1 Salk. 282. (*Nisi Prius*, coram Holt, C. J.) This was an action on the case against defendants, masters of a stage coach. A trunk was delivered to their coachman; it was lost out of the coachman's possession. It seems that no money was paid to the defendants for carrying the trunk. Holt, C. J., held that an action did not lie, and the plaintiff was nonsuited. He thus laid down the rule: "no master is chargeable with the acts of his servant but when he acts in execution of the authority given by his master, and then the act of the servant is the act of the master." See also *Jones v. Hart* (1699), 2 Salk. 441; L. Ray. 736 (a pawnbroker's servant took a pawn; the pawnbroker tendered the money to the servant, who said he had lost the goods; held by Holt, C. J., that action for trover lay against the master); *Hern v. Nichols* (1701), Holt, 462, 1 Salk. 289.

For an account of the Roman law as to liabilities of masters, see *Die Haftung für Fremde Culpa nach Römische Recht*, von Dr. P. F. Von Wyss; Pothier, Oblig. 121; M. Sourdat's *Traité de la Responsabilité*.

The variety of reasons given for the existence of this liability is very surprising. (1.) The servant is the agent of his employer, and the liability of the latter is but an instance of the doctrine *Qui facit per alium facit per se*.

Parke, B., in *Quarman v. Burnett* (1840), 6 M. & W. 509; Alderson, B., in *Hutchinson v. The York, Newcastle and Berwick Ry. Co.* (1850), 5 Ex. 343; Lord Cranworth in *Barbours Hill Coal Co. v. Reid* (1858), 3 Macq. 266. This reason scarcely accounts for the liability of masters for acts which they have forbidden and in circumstances in which an action would lie in case, but not trespass. (2.) "The reason that I am liable," says Lord Brougham in *Duncan v. Findlater* (1839), 6 C. & F. 894, 910, "is this, that by employing him (the servant) I set the whole thing in motion, and what he does, being done for my benefit and under my direction, I am responsible for the consequences and doing it"—a reason which is criticised by Parke, B., in *Quarman v. Burnett*, *ubi sup.*, 510; which does not seem to apply to work not dangerous in itself, and which would justify imposing responsibility upon one who employed a contractor equally with one who employed a servant. See Best, C. J., in *Hall v. Smith* (1824), 2 Bing. 156, 160. (3.) "There ought to be a remedy against some person capable of paying damages to those injured:" Willes, J., in *Limpus v. General Omnibus Co.* (1862), 3 H. & C. 526. (4.) "He (the master) is liable for an injury done to a stranger by his servant acting within the scope of the latter's authority, because the stranger has had no hand in the choice:" Bramwell, B., in *Swainson v. North-Eastern Ry. Co.* (1878), 3 Ex. D. 341, 348. "Masters are also answerable for the injury occasioned by the wrongs or negligence of their servants, &c. This has been established to render masters careful in the choice of whom they employ:" Pothier on *Obligations*, Evans' Translat. p. 72;—a reason which seems to have force only when a master has been guilty of some fault in the choice of his servants. (5.) Holt, C. J., in *Herr v. Nichols*, 1 Salk. 289, an action for deceit, puts the law on the ground that as somebody must suffer, it is but right the person who employed the deceiver should do so. (6.) "As in strictness everybody ought to transact his affairs, and it is by the favour and indulgence of the law that he can delegate the power of acting for him to another, it is highly reasonable that he should answer for such substitute, at least *civiliter*, and that his acts, being pursuant to the authority given him, should be deemed acts of the master:" Bacon's Abridgment, *Master and Servant*. (7.) Bentham, in his *Principles of Penal Law* (vol. i. 383 of *Works*), puts the master's responsibility upon the following ground: "The obligation imposed upon the master acts as a punishment, and diminishes the chances of similar misfortunes. He is interested in knowing the character and watching over the conduct of them for whom he is answerable. The law makes him an inspector of police, a domestic magistrate, by rendering him answerable for their imprudence." The same view is thus put by M. Sainctelette: "La responsabilité du fait d'autrui n'est pas une fiction inventée par la loi positive. C'est une exigence de l'ordre social": *De la Responsabilité et de la Garantie*, p. 124. This seems the ground on which the rule of law can be justified.

APPENDIX B.

Master's civil liability for acts or defaults of servant.

LIABILITY.

Goodman v. Kennell (1828), 3 C. & P. 167. (Person occasionally employed by defendant as his servant took the horse of another when on defendant's business; jury found that the horse was taken with defendant's implied consent or authority; defendant liable; Court refused a new trial.)

Gregory v. Piper (1829), 9 B. & C. 591. (See p. 278, *infra*.)

Chandler v. Broughton (1832), 1 C. & M. 29. (Defendant sitting in a gig beside his servant, who was driving; horse ran away; action in trespass lay.)

Joel v. Morison (1834), 6 C. & P. 501. (See p. 243.)

Booth v. Mister (1835), 7 C. & P. 66. (See p. 261.)

Sleath v. Wilson (1839), 9 C. & P. 607. (See p. 243.)

Giles v. Taff Vale Ry. Co. (1853), 2 E. & B. 822. (Plaintiff contracted to plant hedges for defendants; placed thorn plants in a piece of ground close to defendants' station. The general superintendent of the line refused to let them be removed; defendants liable in trover on the ground (Jervis, C. J.), that "it is the duty of the company, carrying on a business, to leave upon the spot some one with authority to deal on behalf of the company with all cases arising in the course of their traffic as the exigency of the case may demand.")

Patten v. Rea (1857), 2 C. B. N. S. 606. (The defendant's general manager had a horse and gig of his own. They were kept for him at his master's expense, and occasionally used in his master's business. In going with the authority of defendant upon the defendant's business with the horse and gig, he drove against plaintiff's horse. Immaterial that the manager was also going on private business.)

Goff v. Great Northern Ry. Co. (1861), 3 E. & E. 672. (Plaintiff, at

NO LIABILITY.

McManns v. Crickett (1800), 1 East, 106. (See p. 245.)

Croft v. Alison (1821), 4 B. & Ald. 590. (See p. 245.)

Mackenzie v. McLeod (1834), 10 Bing. 385. (Housemaid lighted straw in order to clean a smoky chimney; master not liable on the ground that it was no part of her duty to clean the chimney.)

Lyons v. Martin (1838), 8 A. & E. 512. (See p. 241.)

Lamb v. Palk (1840), 9 C. & P. 629. (See p. 245.)

Gordon v. Roll (1849), 4 Ex. 365. (Defendant, a contractor for certain works, employed sub-contractor, whose men in the execution of the works but without the defendant's authority used the plaintiff's crane, and broke it; defendant not liable in an action of trespass.)

Eastern Counties Ry. Co. v. Broom (1851), 6 Ex. 314. (Servant of a railway company took plaintiff, a passenger, into custody for an alleged breach of a bye-law, &c., and carried him before a magistrate. The attorney of the company attended to prosecute; held no evidence of authority, on the ground that "it was not shown there had been any directions given to the (servants) in general to enforce the bye-laws and no evidence of ratification." This case seems not reconcilable with *Giles v. Taff Vale Co.* See *Goff v. Great Northern Ry. Co.*, and *Bank of New South Wales v. Owston*.)

Roe v. Birkenhead Ry. Co. (1851), 7 Ex. 36. (Plaintiff, a passenger, who refused to pay an additional fare, was taken into custody by a railway servant acting under the direction of the superintendent of the station; defendants not liable. There was doubt whether the servants were really the servants of the company; Alderson, B. But the case is doubtful.)

LIABILITY.

the instance of ticket-collector, defendants' inspector of police, and superintendent of line, charged with travelling without a ticket with intent to defraud. "We think it a reasonable inference that, in the conduct of their business, the company have on the spot officers with authority to determine, without the delay attending on convening the directors, whether the servants of the company shall or shall not, on the company's behalf, apprehend a person accused of this offence.")

Scymour v. Greenwood (1861), 6 H. & N. 359, and 7 H. & N. 355. (Defendant liable for the act of his servant, a guard of an omnibus, in forcibly removing passenger whom he believed to be drunk. "It is not convenient for the master personally to conduct the omnibus, and he puts the guard in his place; therefore if the guard forms a wrong judgment the master is responsible.")

Limpus v. General Omnibus Co. (1862), 3 H. & C. 526. (See p. 239.)

Page v. Defries (1866), 7 B. & S. 137. (Defendants sent their barge under management of lighterman to a wharf to bring it alongside. At suggestion of foreman of wharf, the lighterman moved away from the wharf plaintiff's barge and fastened it to a pile in the river. The plaintiff's barge settled on a projection in bed of river and was injured.)

Lunt v. London and North-Western Ry. Co. (1866), L. R. 1 Q. B. 277. (Gatekeeper inviting plaintiff to pass over a railway crossing.)

Whartman v. Pearson (1868), L. R. 3 C. P. 422. (Defendant, a contractor, employed men and horses; the men were allowed an hour for dinner, but not allowed to leave the horses. One of the men left his horse unattended; it ran away; held that it was properly left to the jury to say whether driver was acting within scope of his employment, and that they were justified in finding that he was.)

Van Den Eynde v. Ulster Ry. Co. (1871), 5 Ir. C. L. 6 and 328. (A clerk of the defendants, while issuing tickets, erroneously thought he had seen a ticket in the plaintiff's hand; charged him with having stolen a

NO LIABILITY.

Mitchell v. Crasswell (1853), 13 C. B. 237. (See p. 243.)

Lygo v. Newbold (1854), 9 Ex. 302. (Plaintiff agreed to carry defendant's goods for her in his cart; defendant's servant, without defendant's authority, allowed plaintiff to ride on the cart; cart broke down, and the plaintiff injured.)

Murphy v. Caralli (1864), 3 H. & C. 462. (Bales of cotton stored insecurely in a warehouse by porters in the defendant's employment under the superintendence of J., the warehouse-keeper employed by the owner of warehouse; defendant not liable, the bales having been stowed under J.'s directions.)

William v. Jones (1865), 3 H. & C. 602. (See p. 246.)

Poulton v. London and South-Western Ry. Co. (1867), L. R. 2 Q. B. 534. (See p. 247.)

Storey v. Ashton (1869), L. R. 4 Q. B. 476. (A carman, sent with horse and cart by his employer, a wine-merchant, to deliver wine and bring back empty bottles; while returning, after business hours, he drove out of his way on business, not his master's; while he was so driving, the plaintiff was run over.)

Edwards v. London and North-Western Ry. Co. (1870), L. R. 5 C. P. 445. (See p. 246.)

Walker v. South Western Ry. Co. (1870), L. R. 5 C. P. 640. (See p. 246.)

Allen v. London and South Western Ry. Co. (1870), L. R. 6 Q. B. 65. (See p. 246.)

Foreman v. Mayor of Canterbury (1871), L. R. 6 Q. B. 214. (Defendants liable for negligence of servants employed in repairing road.)

Cornick v. Digby (1876), 9 Irish C. L. 557. (Defendant's steward and herd got leave to go to a neighbouring town, on business of his own, with his master's horse and cart; it was afterwards agreed that he should bring home meat for the defendant; he drove the cart so negligently as to injure the plaintiff; Court refused to hold, as matter of law, defendant liable.)

Rayner v. Mitchell (1877), L. R. 2 C. P. D. 357. (Defendant's carman,

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ticket; and detained him; defendants liable.)

Moore v. Metropolitan Ry. Co. (1872), L. R. 8 Q. B. 36. (See p. 247.)

Bayley v. Manchester and Staffordshire Ry. Co. (1872), L. R. 7 C. P. 415. (Plaintiff took his seat in defendants' train for Macclesfield; a porter of the defendants, supposing he was in the wrong train, violently pulled him out and injured him.)

Wart v. General Omnibus Co. (1873), 27 L. T. 761; affirmed, 28 L. T. 850. (Blow struck by driver of defendants' omnibus at driver of another omnibus; passenger in former injured; Court refused to set aside verdict for plaintiff on the ground that there was evidence of negligence in the course of employment.)

Burns v. Pontson (1873), L. R. 8 C. P. 563. (Defendant, a stevedore, employed to ship rails, had a foreman, whose duty it was to carry the rails to the ship after the carman had brought them to the quay, and unloaded them. The foreman voluntarily got into the cart, and negligently unloaded some rails whereby the plaintiff was injured. Evidence for a jury that foreman was acting within scope of his duty so as to make stevedore liable. Brett, J., dissenting.)

Tebbutt v. Bristol Ry. Co. (1870), L. R. 6 Q. B. 73. (The stations of defendants and two other railway companies were adjoining, and the passengers of the different companies passed from one to the other, the whole area being used in common. The plaintiff, while on the platform of the defendants on his way from the terminus of one of the companies to the booking office of another, was injured by the negligence of a porter of the defendants. Defendants liable, although plaintiff not a passenger of the defendants.)

Mackay v. Commercial Bank of New Brunswick (1874), L. R. 5 P. C. 394. (Cashier of a bank who acted as manager, fraudulently induced plaintiff to accept certain bills; the defendants obtained the benefit of the bills.)

Venables v. Smith (1877), L. R. 2 Q. B. D. 279. (Cabowner liable

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without his master's permission, took horse and cart out of his master's stable to deliver a child's coffin at a relative's house; he picked up two or three barrels at public-houses which defendant supplied. He drove against plaintiff's cart, and injured it.

Bank of New South Wales v. Omston (1879), L. R. 4 Ap. 270. (Action for malicious prosecution against a bank; prosecution instituted by bank manager; no implied authority from his position to institute prosecutions.)

Bolingbroke v. Local Board, Swindon (1874), L. R. 9 C. P. 575. (See p. 241.)

Sterens v. Woodward (1881), L. R. 6 Q. B. D. 318. (See p. 245.)

Richards v. West Middlesex Waterworks Co. (1885), 15 Q. B. D. 660. (See p. 241.)

Jones v. Corporation of Liverpool (1885), 14 Q. B. D. 890. (See p. 19.)

Welch v. London and North Western Ry. Co. (1886), 34 W. R. 166. (Passenger's luggage entrusted to porter while passenger went away for an hour for purposes unconnected with transit.)

British Mutual Banking Co., Ltd. v. Charnwood Forest Ry. Co. (1887), 18 Q. B. D. 714. (The defendant company's secretary made, for his own benefit, fraudulent answers to questions as to the value of certain stock.)

Charleston v. London Tramways Co. (1888), 4 Times L. R. 629. (Passenger given in charge by defendant's conductor for attempting to pass bad money; defendant company itself did not possess this power.)

Abrahams v. Deakin, [1891] 1 Q. B. 516. (See p. 246, n. (g).)

Baumwoll Manufactur, &c. v. Furness, [1893] A. C. 8. (Ship chartered for four months; captain, officers, and crew paid by charterer; captain under charterer's orders; goods shipped under bills of lading, signed by captain and charterer's agents, who had no authority to pledge owner's credit. Captain not servant of owner.)

Gwilliam v. Twist, [1895] 2 Q. B. 84. (Driver of defendant's omnibus forbidden to drive by police; he and conductor invite stranger to drive

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for negligence of driver who, on his return to owner's mews, drove a little way from them to purchase snuff for himself.)

Edwards v. Midland Ry. Co. (1880), 6 Q. B. D. 287. (Action for malicious prosecution lies against a company.) Followed in *Cornford v. Carlton Bank, Ltd.*, [1899] 1 Q. B. 392; and see *Citizens' Life Assurance Co. v. Brown*, [1904] A. C. 423. (See p. 234, n. (d).)

Furlong v. South London Tramways Co. (1884), 48 J. P. 329. (Plaintiff tendered half-sovereign for fare: defendants' conductor, supposing it to be counterfeit, gave plaintiff in charge.)

Bunch v. Great Western Ry. Co. (1886), 13 A. C. 31. (Plaintiff's luggage handed to defendants' porter at 4.20 p.m. for 5 p.m. train on Christmas Eve. Plaintiff went away to meet her husband and take her ticket, returned at 4.30 to platform: the porter and plaintiff's handbag had disappeared.)

Ruddiman v. Smith (1889), 60 L. T. (N. S.) 708. (See p. 238.)

Smith v. North Metropolitan Tramways Co. (1891), 55 J. P. 630. (See p. 238.)

The Apollo: Little v. Port Talbot Co., [1891] A. C. 499. (See p. 238.)

Ruth v. Surrey Commercial Dock Co. (1891), 8 Times L. R. 116. (Plaintiff employed by contractor, and injured by fall of deal planks which had been improperly loaded. Defendants' foreman admitted that if he saw improper loading he would interfere.)

Dyer v. Munday, [1895] 1 Q. B. 742. (See p. 241.)

Egelhart v. Farrant, [1897] 1 Q. B. 240. (See p. 242.)

Line v. Royal Society for the Prevention of Cruelty to Animals (1902), 18 Times L. R. 634. (Defendants' rules, but not their Act, permitted their inspectors to give flagrant offenders into custody: an inspector acted mistakenly under this rule.)

Jones v. Scullard, [1898] 2 Q. B. 565. (Owner of brougham, horses and harness liable for negligence of a hired coachman.) (See p. 20.)

Abraham v. Bullock (1901), 86 L. T. 796. (Defendant let out brougham,

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omnibus to defendant's yard, a quarter of a mile distant. Plaintiff injured by stranger's negligent driving. No evidence of such necessity as authorized defendant's servants to engage stranger to drive.)

Beard v. London General Omnibus Co., [1900] 2 Q. B. 530. (See p. 232.)

Hanson v. Waller, [1901] 1 K. B. 390. (Plaintiff given into custody by defendant's manager on a mistaken charge of theft; the act not reasonably necessary for protection of defendant's property; therefore no implied authority.) See *Stevens v. Hinshelwood* (1891), 55 J. P. 341.

McDonnell v. Great Western Ry. Co., [1903] 2 K. B. 331. (Defendants' servants shunted trucks which, owing to the means they took, would have remained stationary but for the interference of trespassing boys, who released the trucks so that they injured the plaintiff. Defendants' servants' negligence not "effective cause" of injury.)

Sanderson v. Collins, [1904] 1 K. B. 628. (Defendant sent his carriage to be repaired by plaintiff. The plaintiff lent a carriage to defendant to use while the repairs were proceeding. Defendant's coachman, without defendant's knowledge, took the plaintiff's carriage out for his own purposes, and injured it by his negligent driving.)

Cheshire v. Bailey, [1905] 1 K. B. 237. (Plaintiff hired from defendant a brougham, horse and coachman to drive his traveller about with samples of his wares. Defendant knew the traveller would leave the brougham sometimes, with the coachman in charge of the samples. The coachman, by arrangement, drove to meet thieves, who stole the samples.)

Ruben v. Great Fingall Consolidated, &c., [1906] A. C. 439. (See p. 235, *supra*.)

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horse, and coachman to plaintiff to drive plaintiff's commercial traveller. The coachman left the brougham unguarded in traveller's absence, and the goods in the brougham were stolen.)

SCOTCH CASES.

Baird v. Graham (1852), 14 D. 615. (A master sent his servant with glandered horse to a fair at such a distance that the servant was obliged to put up for the night; action by owner of stable for loss of horses and cattle which defendant's horse had infected with glanders.)

Faulds v. Townsend (1861), 23 D. 437; 33 Jur. 224. (A manufacturing chemist, whose business consisted partly in boiling down the carcases of horses for manure, liable in the full value of a stolen horse, which had been purchased by his servant and used for the above purpose.)

Gregory v. Hill (1869), 8 R. 282. (Defendant employed foreman and masons to build a house, and paid them wages; he also entered into a contract with a carpenter for carpenter's work; held that the defendant was liable for injuries to carpenter by the negligence of the masons.)

AMERICAN CASES.

Philadelphia and Reading Ry. Co. v. Derby (1852), 14 How. 468. (Defendants liable for collision caused by servants disobeying an express order.)

Carman v. Mayor of New York (1862), 14 Abb. 301. (Owner of land employed workmen to cut trees on his own land without employing a competent superintendent, or instructing them as to the boundaries; defendant liable for trees of plaintiff which his workmen ignorantly cut down and removed.)

Althorff v. Wolf (1860), 8 Sm. N. Y. 355. (See p. 261, n. (x).)

Chapman v. New York Central Ry. Co. (1865), 33 N. Y. R. 369. (Defendants liable for torts of servants when drunk.)

Lannen v. Albany Gas Light Co. (1871), 44 N. Y. 459. (Defendants,

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Linwood v. Hathorn (1817), 19 F. C. 327; 1 S. App. 20. (The servants of defendant cut down a tree close to a public road; it fell upon and killed a man; the defendant not liable, he being at the time absent, and having given no authority to cut the tree, nor apparently any authority to cut trees in that locality.)

Waddie v. Duke of Roxburgh (1822), 1 S. 367. (R. obtained an interdict against W. from deepening part of the river Tweed; W.'s servant, in his master's absence, and against his express orders, committed a breach of the interdict; W. not responsible.)

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Wright v. Wilcox (1838), 19 Wend. 343. (Master not liable when a servant wilfully threw a lad off a waggon and drove over him.)

Mali v. Lord (1868), 39 N. Y. 381. (Defendant not liable for the act of his superintendent in arresting and searching the plaintiff, on a charge of stealing goods from the defendant.)

Fraser v. Freeman (1871), 43 N. Y. 566. Defendant, under claim of right, endeavoured to force his way, with the aid of his servant, into premises of plaintiff's intestate; servant shot the latter in the struggle; defendant not liable, in the absence of evidence that shot was fired with assent or by direction of defendant.)

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informed that gas was escaping in the cellar of a house, sent servant to ascertain where the leak was; the servant lighted a match for this purpose, and an explosion took place; defendants liable.)

Wolfe v. Mersereau (1859), 4 Duer, 473. (No defence that defendant's servant wilfully drove against plaintiff's waggon, if he did so in order to avoid greater peril, which it was the defendant's interest to avoid.)

Railroad Co. v. Hanning (1872), 19 Wal. 649. Contractor agreed to furnish the materials and labour for building a wharf; to do the work under the direction and supervision of the railway company's engineer and to his satisfaction; the company liable for the negligence of the contractor or his servants.)

CHAPTER XXV.

CRIMINAL LIABILITY OF MASTER FOR THE ACTS OF HIS
SERVANT.

A MASTER is criminally liable for the acts of his servant done in execution of his express orders.

An act which the master has ordered is for all purposes his. In an early case Foster, J., thus explained the criminal responsibility of a master, who orders his servant to do that which is unlawful:—

A. biddeth his servant to hire somebody, no matter whom, to murder B., and furnisheth him with money for that purpose; the servant procureth C., a person whom A. never saw nor heard of, to do it; is not A., who is manifestly the first mover or contriver of the murder, an accessory before the fact?

Answer:—if present, he is a principal, if absent an accessory before the fact (*a*).

It is, of course, an *a fortiori* case if the master procure the servant himself to commit the murder. On similar grounds, a baker, who knew that a servant put into bread alum, contrary to 36 Geo. III. c. 22, s. 3, and 37 Geo. III. c. 98, s. 21, was held to be properly indicted for selling bread which contained so much alum as made it injurious to health (*b*). If the employer makes use of an agent who is ignorant of the criminal character of an act, the former is liable (*c*); if both are aware that the act which they do is illegal, both are liable (*d*); and the fact that he was obeying his master's command is no defence to the servant (*e*). The general principle prevails that a man can be made criminally responsible only for an act which he has himself committed or ordered. “Whoever actually commits, or takes part in

(*a*) Foster, C. C. 125.

(*b*) *R. v. Dixon* (1814), 3 M. & S. 11.

(*c*) *Reg. v. Bleasdale* (1848), 2 C. & K. 765.

(*d*) *Reg. v. James* (1837), 8 C. & P. 131. See p. 228, *supra*.

(*e*) *Maloney v. Bartley* (1812), 3 Camp. 210, 212.

the actual commission of a crime, is a principal in the first degree, whether he is on the spot when the crime is committed or not;" and "whoever aids or abets the actual commission of a crime, either at the place where it is committed, or elsewhere, is a principal in the second degree in that crime" (*f*). Some important exceptions have sprung up. Masters may be criminally liable for libels published by their servants acting within the scope of their employment, even though they are no parties to the publication. The proprietor of a newspaper, for example, may be absent at the time of the publication of a libel; he may be totally ignorant of it, and morally innocent; the editor or other servant may have acted negligently; but at Common Law the proprietor was *prima facie* liable. Thus, in *R. v. Ahnau* (*g*) the owner of a book-shop was indicted for the sale of a libellous pamphlet of the nature of which it did not appear that he was aware; and in *R. v. Walter* (*h*), decided in 1799, Lord Kenyon ruled that the proprietor of a newspaper was answerable criminally for the acts of his servant though he lived in the country and had nothing to do with the conducting of the newspaper.

This is, however, subject to sect. 7 of 6 & 7 Vict. c. 96, which provides:—

Whensoever, upon the trial of any indictment or information for the publication of a libel, under the plea of "not guilty," evidence shall have been given which shall establish a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be competent to such defendant to prove that such publication was made without his authority, consent, or knowledge, and that the said publication did not arise from want of due care or caution on his part (*i*).

Criminal Liability of Master under certain Statutes.

There is another class of cases, hard to define, in which masters have been made to answer in criminal or quasi-criminal proceedings, for acts the knowledge of which was not brought home to

(*f*) Stephen's *Digest of Criminal Law* (5th ed.), pp. 30 and 31. Of course a master might be guilty of manslaughter through the acts of his servants; *e.g.* if a druggist employed an unskilful assistant, and customers were thereby poisoned.

(*g*) (1770), 5 Bur. 2686.

(*h*) 3 Esp. 21; also *R. v. Gutch* (1829), Moo. & M. 432.

(*i*) *R. v. Holbrook* (1877), 3 Q. B. D. 60; 4 Q. B. D. 42. In this case Lush, J. (*ibid.* p. 49), instances "public nuisances" as an exception to the rule that innocence of mind is a defence to the master, and cites *Reg. v. Stephens* (1866), L. R. 1 Q. B. 702.

them. In interpreting certain statutes, particularly those relating to revenue purposes, Courts have disregarded the presumption that a person is criminally liable for no acts but his own, on the ground that, though penal in their consequences, the proceedings were substantially civil; that it was a master's duty to prevent breaches of the law by his servants; or that the statutes would be rendered inoperative if a master were not punished for their acts. It is too late to question the legality of these decisions, however difficult it may be to reconcile some of them with the principle that *mens rea* is necessary to constitute a criminal offence. The 35 & 36 Vict. c. 94, s. 16, made it an offence for "any licensed person" to supply any liquor to a constable on duty. It was argued in one case that a licensed victualler ought not to be convicted under this section when liquor was supplied by a servant without his master's knowledge. That was not the view of the Court; it was thought enough that the servant knew (*k*). In the subsequent case of *Bosley v. Davies* (*l*), proceedings were taken under sect. 17 of the same Act against a publican as a "licensed person" who "suffered any gambling," &c. The Court decided that actual knowledge of the offence by the master was not necessary; but that there must be some evidence that he connived at what was going on; though evidence that his servant was in charge of the premises and knew what was going on is sufficient (*m*), for the master in such a case has "delegated his own power to prevent" (*n*). This interpretation was adopted in *Redgate v. Haynes* (*o*), and *Bond v. Evans* (*o*).

(*k*) *Mullins v. Collins*: see note (*o*). But see the comments of Coleridge, C. J., on this case in *Somerset v. Hart* (1884), 12 Q. B. D. 360.

(*l*) See note (*o*).

(*m*) *Bond v. Evans* (1888), 21 Q. B. D. 249. In *Emary v. Nolloth*, [1903] 2 K. B. 264, the master himself was in charge of the premises: *vide infra* at end of note (*o*).

(*n*) See *Emary v. Nolloth*, [1903] 2 K. B. 264, 269.

(*o*) See below. The following are the chief cases:—MASTER LIABLE. - *A.-G. v. Strangforth* (1721), Bunb. 97. (The Crown lost duties on wine by mistake of clerk of one of five partners; defendants liable.) *A.-G. v. Burgers* (1726), Bunb. 223. (Pengelly, C. B., ruled that, if several persons were concerned either in partnership or otherwise, the Crown might come against any one of them for the whole penalty, it (non-payment of duty) being in the nature of a tort.) *Mitchell v. Torup* (1766), Par-

ker, 227. (Tea imported by sailors without knowledge of owners; ship forfeited.) *R. v. Dixon* (1814), 4 Camp. 12; see note (*b*). *A.-G. v. Sidden* (1830), 1 C. & J. 220; 1 Tyr. 41. (Dealer in tobacco convicted of harbouring and concealing tobacco, which was, in fact, concealed by his servant.) *Advocate-General v. Grant* (1853), 15 T. 980. (Clerk to a distiller sold a cask of whisky to one who had no licence to sell spirits; sent it to the purchaser with permit obtained for another party; an offence within 2 Will. IV. c. 16, for which employers liable.) *Mitchell v. Brown* (1858), 29 L. J. M. C. 53. (Owner of a vessel convicted under 11th sect. of 54 Geo. III. c. 159, which makes it an offence to throw out of any vessel in a navigable river ballast, &c., though owner not on board at the time of the offence.) *Howells v. Wynne* (1863), 15 C. B. N. S. 3. (Breach of special rule made under Coal Mines Regulation Act, 1860; see now the Act of 1887, 50 & 51 Vict.

Looking at the decisions collected below, all that can be said is that there is a *prima facie* improbability against criminal

e. 58, ss. 51, 52.) *Searle v. Reynolds* (1866), 7 B. & S. 704. (Appellant who did not know of order not liable for disobedience of his foreman to order of inspector to disinfect certain premises, Cockburn, C. J.; appellant liable, Mellor, J.) *Cole v. James* (1871), L. R. 7 Q. B. 135. (To convict baker under 6 & 7 Will. IV. c. 37, s. 8, for putting alum in bread, knowledge necessary; but the knowledge of the servant will suffice to make master liable.) *Barnes v. Alcock* (1872), L. R. 7 Q. B. 474. (Occupiers of factory liable under 18 & 19 Viet. c. 121, s. 12, and 23 & 24 Viet. c. 77, s. 13, for a nuisance by emission of smoke caused by their servants.) *Mullins v. Collins* (1874), L. R. 9 Q. B. 292. (A licensed victualler liable, under 35 & 36 Viet. c. 94, s. 16, sub-s. 2; although he had no knowledge that his servant had supplied drink to a constable on duty.) *Bosley v. Davies* (1875), 1 Q. B. D. 81. (Appellant charged with "suffering" gaming on his licensed premises; case sent back to the justices with an intimation that, though actual knowledge of card-playing on the part of the appellant or his servants need not be shown, some circumstances must be proved from which it could be inferred that they connived at what was going on.) *Redgate v. Haynes* (1876), 1 Q. B. D. 89. (Appellant charged under sect. 17 of the Intoxicating Liquors Licensing Act, 1872 (35 & 36 Viet. c. 94), with "suffering" gaming to be carried on in an hotel; justices inferred that the appellant knew that gaming was intended to be carried on, and took pains not to know what her guests were doing.) *Bond v. Evans* (1888), 21 Q. B. D. 249. (Offence same as in *Redgate v. Haynes*; no evidence of licensed person's connivance; but servant in charge of premises and saw gaming going on.) *Niven v. Greaves* (1890), 54 J. P. 548. (Respondent charged under Public Health Act, 1875, with permitting his chimney to send forth smoke; no evidence of negligence except on part of stoker.) *Commissioners of Police v. Cartman*, [1896] 1 Q. B. 655. (Sale of liquor by respondent's servant, contrary to his orders, to a drunken person; respondent guilty of offence under 35 & 36 Viet. c. 94, s. 13, the act being within the scope of the servant's employment.) *Brown v. Foot* (1892), 8 Times L. R. 268. (Adulterated milk sold without knowledge or assent of master, 38 & 39 Viet. c. 63, s. 6.) *Collman v.*

Mills, [1897] 1 Q. B. 396. (Sheep slaughtered by servant in master's absence and contrary to his orders, in contravention of bye-law under Slaughter-house Act, 1874.) *Coppen v. Moore* (No. 2), [1898] 2 Q. B. 306. (Merchandise Marks Act, 1887, s. 2, sub-s. 2). Sale by servant of hams under false description, without knowledge and contrary to orders of master.) MASTER NOT LIABLE.—*Harrison v. Leaper* (1862), 5 L. T. (N. S.) 640. (Owner of a steam threshing machine not liable when his servant put it, without his master's orders and contrary to the Highway Act, too near the road.) *Copple v. Burton* (1870), 39 L. J. M. C. 111. (A kept a refreshment room, and had a notice as to penalties incurred for supplying refreshments to persons not travellers during prohibited hours; his servant neglected to question certain strangers: "Gross negligence or want of precaution in this matter would be evidence of guilt, but there is nothing of the sort here," Willes, J.) *Nichols v. Hall* (1873), L. R. 8 C. P. 322. (To convict a person of an offence under order made in virtue of Contagious Diseases (Animals) Act, knowledge that animal is diseased, necessary.) *R. v. Handley* (1864), 9 L. T. (N. S.) 827. (To sustain conviction under 5 & 6 Viet. c. 99, ss. 8 & 12, for employment of females in mines, knowledge or acquiescence must be proved.) *R. v. Gibbons* (1866), 4 R. (3rd series) 656. (Sale of beer from cart on highway by a servant employed to deliver beer, for which orders had not previously been given at the brewery; no part of the duty of the servant to sell beer; no evidence of servant's knowledge.) *Somerset v. Hart* (1881), 12 Q. B. D. 360. (Charge same as in *Redgate v. Haynes*; no evidence of master's knowledge or connivance; servant, who knew, not in charge of premises.) *Norman v. Jones* (1886), 17 Q. B. D. 132. (Steward of club sold liquor without licence to non-members contrary to orders and without knowledge or assent of trustees; trustees not liable.) *Chisholm v. Doulton* (1889), 22 Q. B. D. 736. (Owner of factory charged with negligently using furnace so as to emit smoke, 16 & 17 Viet. c. 128, ss. 1, 2; no evidence of negligence save on part of stoker.) *Massey v. Morris*, [1894] 2 Q. B. 412. (Shipowner charged under 39 & 40 Viet. c. 80, s. 28, with "allowing the ship to be so loaded as to submerge . . . the

liability in the absence of *mens rea*; that the Legislature may, nevertheless, for public reasons, impose penalties on those who do not prevent as well as those who commit certain offences; that a construction which would make a statute inoperative is not to be assumed; and that "the general scope of the Act, and the nature of the evils to be avoided" (*p*) must determine whether a master is chargeable for acts which are unknown to him. Where the word "knowingly," "wilfully" or "negligently" occurs, knowledge or negligence has of course to be proved: the difficulty arises in the cases in which the question is of implying these terms. Compare, *e.g.*, *Cundy v. Lezcoq* (*q*) with *Somerset v. Hart* (*r*); or *Mullins v. Collins* (*s*) and *Bond v. Evans* (*t*) with *Sherras v. de Rutzen* (*u*) and *Masey v. Morris* (*x*), and it becomes plain that the construction of the statute is controlled by collateral considerations (*y*). In *Sherras v. de Rutzen* (*u*) Wright, J., discusses somewhat fully the question of the necessity of proving *mens rea* (*z*).

centre of the disc"; loading done by master; no evidence of owner's knowledge or assent.) *Somerset v. Wade*, [1894] 1 Q. B. 574. (Permitting drunkenness on premises, 35 & 36 Vict. c. 94, s. 13 (1); no evidence of publican's knowledge or connivance or of servant being in charge.) N.B.—The onus of proof in relation to this offence has been shifted on to the publican by the Licensing Act, 1902, s. 4. *Emery v. Nollath*, [1903] 2 K. B. 264. (Intoxicating liquor was knowingly sold to a child under fourteen in a bottle neither corked nor sealed by a licensed person's servant contrary to the express orders and without the knowledge of his master, who was himself in charge of the premises at the time of the sale.—*Held*, that the licence-holder could not be convicted under sect. 2 of the Intoxicating Liquors (Sale to Children) Act, 1901 (1 Edw. VII. c. 27).) *Boyle v. Smith*, [1903] 1 K. B. 432. (Respondent, who was licensed to sell by retail, at his brewery, beer for consumption off the premises, employed a drayman to deliver beer to customers. The drayman had no authority to sell any beer for the respondent, his sole duty being to deliver beer to customers only who had previously ordered it, and he had been expressly ordered not to sell or deliver beer to other persons, and to bring back to the brewery any beer which he was unable to deliver. The drayman sold and delivered beer from his van to persons who had not previously ordered

it:—*Held*, that respondent could not be convicted under sect. 3 of the Licensing Act, 1872, for selling liquor at a place where he was not authorized by his licence to do so.) *Dickenson v. Fletcher* (1873), L. R. 9 C. P. 1; 43 L. J. M. C. 25. (Breach of rule in Mines Regulation Act, 23 & 24 Vict. c. 151, ss. 10 & 22; see now 50 & 51 Vict. c. 58, ss. 49, 50.) *Baker v. Carter* (1878), L. R. 3 Ex. D. 132. (Breach of rule in Coal Mines Regulation Act, 1872, s. 51; see now 50 & 51 Vict. c. 58, ss. 49, 50.) See also *Hearne v. Garton* (1859), 28 L. J. M. C. 216; *R. v. Bishop* (1880), 5 Q. B. D. 259.

(*p*) Stephen's History of the Criminal Law, vol. ii., p. 117 (1883 ed.).

(*q*) (1884), 13 Q. B. D. 207 (sale of liquor to drunken person).

(*r*) (1884), 12 Q. B. D. 360 (permitting gaming).

(*s*) (1874), L. R. 9 Q. B. 292 (supplying drink to constable on duty).

(*t*) (1888), 21 Q. B. D. 249 (permitting gaming).

(*u*) [1895] 1 Q. B. 918 (supplying drink to constable on duty).

(*x*) [1894] 2 Q. B. 412 (submerging load-line of ship).

(*y*) See the attempt to reconcile the cases in *Bond v. Evans*, *ubi. sup.*; and the judgment of Alverstone, C. J., in *Emery v. Nollath*, [1903] 2 K. B. 264, 268.

(*z*) See also on this point *Betts v. Armistead* (1888), 20 Q. B. D. 771; *Budd v. Lucas*, [1891] 1 Q. B. 408, remarks

Employers have frequently been held criminally answerable for nuisances committed by their servants. Thus, in *R. v. Medley (a)*, the directors of a gas company were indicted jointly with their servants, who conducted the works, for turning refuse into a stream. Denman, C. J., directed the jury to find the defendants guilty, though they were ignorant of what had been done. Perhaps some of such decisions were given at a time when the difference between criminal and civil responsibility had not been precisely determined. Perhaps, too, they are justified by the fact that proceedings for nuisances are in substance, though not in form, civil.

Under this class of cases may be ranged those of which *Gregory v. Piper (b)* is a type. That was a case in which a servant, though careful and skilful, could not carry out the orders of his master without doing the mischief which was complained of. A servant was ordered to lay down a quantity of rubbish near the plaintiff's wall and gates -- which could not be done without some of the rubbish touching the wall or gates; the defendant was made answerable for the inevitable or natural consequences of his instructions.

of Pollock, B. and Charles, J. at pp. 412, 413; *Kearley v. Tylor* (1891), 65 L. T. (N. S.) 261; *Derbyshire v. Houlston*, [1897] 1 Q. B. 772; *Parker v. Alder*, [1899] 1 Q. B. 20; *Brooks v. Mason*, [1902] 2 K. B. 743; *Anglo-American Oil Co., Ltd. v. Manning*, [1908] 1 K. B. 536. In this last named case, which turned, as Channell, J., said, on "very special circumstances," an employer had been convicted under the Weights and Measures Act, 1875, s. 25, of "having in his possession a measure . . . which is unjust." It was admitted that *mens rea* was not an element in the offence. A servant got possession of and used the measure in question in fraud of his employers for his own

fraudulent purposes, and not in the interests of his employers. The Court, applying the principle which governs the civil liability of a master for his servant's torts, held that *in the circumstances* the possession of the servant was not the possession of the master, and quashed the conviction.

(a) (1824), 6 C. & P. 292. See also *R. v. Stephens* (1866), L. R. 1 Q. B. 702. (Owner of works carried on by his agents, indictable for causing nuisance by depositing rubbish in a public navigable river, though the defendant had prohibited the workmen from so depositing the rubbish.)

(b) (1829), 9 B. & C. 591.

CHAPTER XXVI.

MASTER'S LIABILITY TO SERVANTS

A MASTER is not liable at Common Law to his servants for the acts of fellow-servants done in the course of their employment.

This principle, which, it would appear, is peculiar to English law and kindred systems (*a*), has been altered by the Employers' Liability Act of 1880, and it does not apply at all to claims under the Workmen's Compensation Act, 1906. Both these statutes are dealt with subsequently (*b*). But it will be advisable to examine the Common Law which is still in force. The reasons assigned for the exemption above stated are various. Sometimes it is put on the ground of general policy, and on the inexpediency of exposing a master to a multiplicity of actions (*c*). Sometimes the reason assigned is that a servant does, as an implied part of the contract between himself and his master, take upon himself the natural risks and perils incident to the performance of his services (*d*); or it is said that the liability of the master for the acts of the servant is an exception which ought not to be extended, and that the servant has no cause of action against his fellow servant because "he has not stipulated for a right of action against his master if he sustains damage from the negligence of a fellow servant" (*e*). Perhaps the most generally accepted reason is that stated by Shaw, J., in *Farwell v. Boston Rail. Co.* (*f*):—

The implied contract of the master does not extend to indemnify the servant against the negligence of anyone but himself; and he is not liable in tort, as for the negligence of his servant, because the person suffering does

(*a*) "La question de responsabilité civile se pose en termes identiques entre patrons et ouvriers et entre étrangers": *Le Code Ouvrier*, André et Quiberry, p. 250. In 1883 and 1884 MM. Sauzet and Sainetelette raised the point that the origin of the two kinds of liability differed—that the liability to third persons was founded on tort, while that to servants arose out of contract; but it was admitted that the master was liable to the servant for injuries in his

employment.

(*b*) Pt. ii.

(*c*) *Priestley v. Fowler* (1837), 3 M. & W. 1.

(*d*) *Morgan v. Vale of Neath Rail. Co.* (1865), L. R. 1 Q. B. 149; per Bowen, L. J., in *Thomas v. Quartermaine* (1887), 18 Q. B. D. 685, 691, 692.

(*e*) Bramwell, B., in *Swainson v. The North-Eastern Rail. Co.* (1878), L. R. 3 Ex. D. 341, 348.

(*f*) (1842), 4 Met. (Mass.) 49.

not stand towards him in the relation of a stranger, but is one whose rights are regulated, by contract express or implied.

In another case, it is put in this way:—

The principle is that a servant, when he engages to serve a master, undertakes, as between himself and his master, to run all the ordinary risks of the service; and this includes the risk of negligence upon the part of a fellow servant, whenever he is acting in the discharge of his duty as servant of him who is the common master of both (*g*).

Whatever be the true reason, it has been undisputed law, since the decision of the Exchequer Court in *Priestley v. Fowler* (*h*), that a master is not answerable to one servant for the conduct of another in the same common employment.

Thus, in *Wigmore v. Jay* (*i*), a workman employed by the defendant was killed by the fall of a scaffold, constructed, in the absence of the deceased, under the supervision of the defendant's foreman, who used an unsound pole: it was held that the defendant was not liable to an action brought by the administratrix.

A licensed waterman and lighterman in the employment of a corn merchant is injured by the fall of a sack owing to the carelessness of one of the corn merchant's men in hoisting it (*j*); a miner is killed by the carelessness of an engineer who does not stop a cage when it emerges from the pit, but allows it to be drawn up to the scaffold (*k*); a workman engaged in erecting scaffolding falls and is injured owing to the negligence of the foreman, who did not supply sufficient boards (*l*); a man employed

(*g*) Per Alderson, B., in *Hutchinson v. York, Newcastle and Berwick Rail. Co.* (1850), 5 Ex. 343, 352. Lord Watson, in *Johnson v. Lindsay*, [1891] A. C. 371, 382, says: "The immunity . . . rests upon an implied undertaking by the servant to bear the risks arising from the possible negligence of a fellow-servant, who has been selected with due care by his master." It was on the ground that there was no voluntary undertaking to accept the risks of the particular employment that it was held, in *Tuzeland v. West Ham Union*, [1906] 1 K. B. 538, that "common employment" did not apply to the case of a pauper in a workhouse and the guardians' engineer.

(*h*) (1837), 3 M. & W. 1.

(*i*) (1850), 5 Ex. 354. The action was brought under 9 & 10 Vict. c. 93. See *Seymour v. Maddox* (1851), 16 Q. B. 326. (Action by a chorus singer against defendant, owner of a theatre; the plaintiff fell through a hole in the floor,

owing to the want of light and fencing; no breach of duty shown.) This case is open to doubt. *Skipper v. Eastern Counties Rail. Co.* (1853), 9 Ex. 223. (A guard injured; evidence that the work was too much for the staff of the company; the servant had for several months acted as a guard, and had made no complaint; no liability.) *Couch v. Steel* (1854), 3 E. & B. 402. (No implied obligation on the part of the owner of a ship towards a seaman that the ship shall be in a fit state to perform the voyage.) See, however, 57 & 58 Vict. c. 60, s. 458. The master's omission to ship the stanchions and rails supplied for the bulwarks by the owners does not render the ship "unseaworthy" within the Act: *Hedley v. Pinkney Steamship Co.*, [1894] A. C. 222.

(*j*) *Lovell v. Howell* (1876), L. R. 1 C. P. D. 161.

(*k*) *Bartonshill Coal Co. v. Reid* (1858), 3 Macq. 266.

(*l*) *Gallagher v. Piper* (1864), 16 C. B. N. S. 569.

in carpenter's work for a railway company is injured by the negligence of porters, who shift an engine so that it strikes the scaffold on which he stands (*m*); a seaman fell overboard owing to the negligence of the master in not shipping the bulwark stanchions and rails (*n*); a member of a pantomime chorus is injured by a piece of scenery being dropped on her head (*o*). In all these cases the injured persons or their representatives have at Common Law no redress against the employers, on the ground that the negligence is that of fellow-servants (*p*).

The immunity does not exist where the servant injured is, at the time of the injury, not acting in the service of the master (*q*); nor where the master has not chosen the fellow-servant or servants with reasonable care (*r*). *A fortiori* is the master liable if he employ servants whose incompetency is known to him (*s*).

But if a servant is injured by the results of the negligence of another, who has left the master's service, but whose fellow-servant he would have been had the latter remained in the service, the exemption applies (*t*).

The servant whose negligence or misconduct is the cause of the injury may be the superior of the person injured, and the latter may be bound to obey his orders. He is not the less a fellow-servant (*u*).

In *Wilson v. Merry* (*x*) it was held to make no difference that the accident to men sinking a shaft arose from the negligence of a manager. When a third engineer, while turning a winch under the orders of the first, was injured by one of the handles coming off, the owners were not liable, though the handle came off in

(*m*) *Morgan v. Vale of Neath Rail. Co.*
See note (*d*).

(*n*) *Hedley v. Pinkney*, [1891] A. C.
222.

(*o*) *Barr v. Theatre Royal, Drury Lane, Ltd.*, [1907] 1 K. B. 544.

(*p*) See the cases collected in Appendix B. to this chapter.

(*q*) *Hutchinson v. York, Newcastle & Berwick Rail. Co.* (1850), 5 Ex. 343, 352, 353.

(*r*) *Hutchinson v. York, &c.*, *ibid.* at p. 353; see *Wilson v. Merry* (1868), L. R. 1 H. L. Sc. 326; *Johnson v. Lindsay*, [1891] A. C. 371, 378, per Lord Herschell. But the master does not warrant the competency or care of his servants: *Tarrant v. Webb* (1856), 18 C. B. 797.

(*s*) See p. 291.

(*t*) *Wilson v. Merry*, *ubi sup.*

(*u*) This is no longer the rule in America. "It is now universally held in American Courts that a master always *may* have, and sometimes *must* have, a servant who acts as his representative or *alter ego* towards other servants; and that for the negligence of such representative, *while acting as such*, the master is responsible to the other servants precisely as if it were his own."—Shearman and Redfield on *Negligence* (5th ed.), s. 226. See those learned authors' somewhat intemperate criticism of the English rule and of the decision in *Wilson v. Merry*, *ibid.* ss. 227-229.

(*x*) (1868), L. R. 1 H. L. Sc. 326. See also *Feltham v. England* (1866), L. R. 2 Q. B. 33; *Howells v. Landore Steel Co.* (1874), L. R. 10 Q. B. 62; *Cribb v. Kynoch*, [1907] 2 K. B. 548.

consequence of the negligence of the chief engineer in leaving the machinery in a defective state (*y*).

The Courts have given a very wide signification to the terms "fellow-servant" and "common employment." Two classes of cases must be distinguished:—

(1) The first consists of cases in which two persons are undoubtedly in the service of the same master; and the only question is whether they are engaged in common duties or are so employed as to bring them within the rule. No authority goes so far as to say that the principle holds good between all servants employed by the same master. If a man was tenant of a farm in the country and a warehouse in town, and if one of his farm servants happened to be injured by the negligence of a servant engaged in the warehouse, no one would say that the master would be freed from liability (*z*). A sailor on one ship is not the fellow-servant of a sailor on another, though both ships belong to the same owner (*a*). But it is not necessary that servants should be doing the same or similar acts in order to come within the rule. "The driver and the guard of a stage coach, the steersman and the rowers of a boat," said Lord Cranworth in *Bartonshill Coal Co. v. Reid* (*b*), "the workman who draws the red-hot iron from the

(*y*) *Searle v. Lindsay* (1861), 11 C. B. N. S. 429; but see Employers' Liability Act, 1880. See also Willes, J., in *Gallagher v. Piper* (1864), 16 C. B. N. S. 609; *Howells v. Landore Steel Co.* (1874), L. R. 10 Q. B. 62. In *O'Byrne v. Burn* (1854), 16 D. 1025, a young inexperienced girl was injured while removing clay from rollers in motion by the orders of the defendant's manager, whose duty it was to do this operation himself: the defendant was held liable. This case may be explained by the age and ignorance of the plaintiff, and the fact that it was a specific order of the defendant's manager which directly led to the injury: see the remarks of Lord Cranworth in the *Bartonshill* case, 3 Macq. 266, 295. But in 1854 the Scotch Courts had not accepted the doctrine of common employment; and they did not apply it to the negligence of managers till after *Wilson v. Merry* in 1868: see the remarks of Bray, J., upon *O'Byrne's* case, in *Cribb v. Kynoch*, [1907] 2 K. B. 548, 553, and that learned judge's review there of the cases on this point.

(*z*) See Blackburn, J., in *Morgan v. Vale of Neath Rail. Co.*, L. R. 1 Q. B. 149; and Pollock, C. B., in *Abraham v. Reynolds* (1866), 5 H. & N. 143; Shearman and Redfield on *Negligence* (5th

ed.), s. 237. The master is liable if the injury be due to a risk not incident to the service: *Mansfield v. Baddeley* (1876), 34 L. T. 696 (dressmaker bitten by a savage dog); or if the injury result from the master's negligence: *Warren v. Wilder* (1872), W. N. 87 (explosion of gas). But the above exemption exists in the event of the servant being injured while returning from work, if it be part of the contract that he is to be conveyed back, as in *Tunney v. Midland Rail. Co.* (1866), L. R. 1 C. P. 291. See, as to this, Lord Brougham in *Brydon v. Stewart* (1852), 2 Macq. 30; *Coldrick v. Partridge, &c.* (1908), 24 Times L. R. 616; also *Packet Co. v. M'Cue* (1873), 17 Wall. U. S. 508 (A. hired to assist in loading a boat belonging to defendant, but not in the general employment of defendant. After the job was over, and he was paid, he was crossing a gangway to go ashore, and was injured by the negligence of defendant's servants: a question for the jury whether the relation of master and servant had ceased at the time of the injury); and see the cases collected in the notes to sect. 239, Shearman and Redfield on *Negligence* (5th ed.).

(*a*) *The Petrel*, [1893] P. 320.

(*b*) (1858), 3 Macq. 266.

forge and those who hammer it into shape, the engine-man who conducts the train and the man who regulates the switches or the signals, are all engaged in common work" (c). The duties of two servants may have little connection, and may rarely bring them together. They may be of different grades; they may belong to different departments of the same factory, workshop or establishment; their occupations may lie far apart (d); and they may be scarcely aware of each other's existence. They may be not the less fellow-servants. An enginemaster who controlled the motions of a cage by which a miner was drawn to the surface was held to be a fellow-servant of a miner engaged below (e). Carpenters employed by a railway company to do carpenter's work and porters engaged in shifting a locomotive (f); a miner and the underlooker of a mine (g); a workman and a certificated manager of a colliery appointed under sect. 26 of the Coal Mines Regulation Act, 1872 (h); a labourer employed by a railway company in loading waggons with ballast and the guard of a train by which he was returning after doing his work (i), have been held to be fellow-servants, so that an injury suffered by one by reason of the negligence of the other did not make the master answerable.

Lord Chelmsford, in *Bartonshill Coal Co. v. McGuire* (k), suggested that in general a satisfactory conclusion could be arrived at "by keeping in view what the servant must have known or expected to have been involved in the service which he undertakes"—a test which, looking at the authorities, is scarcely comprehensive enough (l).

In *Charles v. Taylor* (m)—which involved the question whether one of a gang of "lumpers" or men engaged in unloading coal barges for the defendants, who were brewers, and servants of the

(c) Compare remarks of Pollock, C. B., in *Abraham v. Reynolds*. See n. (z), p. 282.

(d) Shaw, J., in *Farwell v. The Boston Rail. Co.* See n. (f), p. 279.

(e) *Bartonshill Coal Co. v. Reid*. See note (b), p. 282.

(f) *Morgan v. Vale of Neath Rail. Co.* (1864), L. R. 1 Q. B. 149; *M'Eniry v. Waterford Rail. Co.* (1858), 8 Ir. C. L. 312.

(g) *Hall v. Johnson* (1865), 3 H. & C. 589.

(h) *Howells v. Landore Steel Co.* (1874), L. R. 10 Q. B. 62.

(i) *Tunney v. Midland Rail. Co.* (1866), L. R. 1 C. P. 291.

(k) See note (b), p. 282.

(l) The principle is thus stated by

Blackburn, J., in *Morgan v. Vale of Neath Rail. Co.*, 5 B. & S. 580: "I think that, whenever the employment is such as necessarily to bring the person accepting it into contact with the traffic of the line of a railway, risk of injury from the carelessness of those managing that traffic is one of the risks necessarily and naturally incident to such an employment, and within the rule." This statement is adopted by Jeune, P., in *The Petrol*, [1893] P. 320, 336, who adds that it "implies that the skill and care of the one is of special importance to the other by reason of the relations between their services." See Shearman and Redfield (5th ed.), s. 236.

(m) (1868), 3 C. P. D. 496.

defendants engaged in moving barrels, were fellow-servants—the Common Pleas Division held that they were such; and Brett, L. J., suggested the following formula:—

When the two servants are servants of the same master, and where the service of each will bring them so far to work in the same place and the same time that the negligence of one in what he is doing as part of the work which he is bound to do may injure the other whilst doing the work which he is bound to do, the master is not liable to the servant for the negligence of the other.

These formulæ seem to show that the test is whether or not the negligence of the fellow-servant is a risk which may reasonably be expected to be incidental to the employment.

In *Cribb v. Kynoch* (*n*), a case of injuries to a girl of fifteen years of age, suffered by reason of a forewoman negligently omitting to warn her of the dangers of her employment, a Divisional Court held that, for the purposes of the rule as to “common employment,” it made no difference that the employment was dangerous and the employee an infant, always supposing that the master have delegated the duty to give warning to competent persons. This decision was approved by the Court of Appeal in *Young v. Hoffman Manufacturing Co., Ltd.* (*o*), a case turning on very similar facts.

(2) A second class of cases consists of those in which persons are in one respect the servants of different masters, and yet for some purposes are regarded as if they were the servants of the same master. To exempt a master there must not only be a common service or employment, but also a common master (*p*); it is not enough that the servants are engaged in a common object but under different masters.

In such cases, therefore, the question arises: Was the defendant, at the time of the injury, common master of both the negligent and the injured persons?

In *Wiggett v. For* (*q*), the defendants, who had contracted with the Crystal Palace Co. to erect a tower, made a sub-contract with M. and four other persons to do by piece particular portions of the work. The workmen of the sub-contractors were paid weekly by

(*n*) [1907] 2 K. B. 548. Bray, J., in delivering the judgment of the Court, elaborately reviewed the leading cases on the point.

(*o*) [1907] 2 K. B. 646. See the remarks on *O'Byrne v. Burn* (1854),

16 D. 1025, in note (*y*), at p. 282, *supra*.

(*p*) *Johnson v. Lindsay*, [1891] A. C. 371; *Cameron v. Nystrom*, [1893] A. C. 308.

(*q*) (1856), 11 Ex. 832.

the defendants according to the time which they worked. The sub-contractors received from the defendants' foreman directions as to the execution of the piecework. The persons who contracted with the defendants to do piecework signed printed regulations, by which they were not at liberty to leave their employment until after they had completed their piecework and had given a week's notice. While W., who was employed by M., one of the sub-contractors, was at work, a workman in the service of the defendants let fall a tool, which killed W. The jury found that W. was the servant of M. The Court of Exchequer held that the defendants were not liable, the deceased and the workman whose negligence caused the accident being common servants of the defendants. But this decision can be supported only on the ground suggested by Channell, B., in *Abraham v. Reynolds* (*r*), viz., that Wiggett was the servant of the defendants, being paid by them and under their control. Otherwise it is overruled by *Johnson v. Lindsay* (*s*). In this connection may be mentioned *Murray v. Currie* (*t*). The defendant had entrusted the unloading of a vessel to a master stevedore; the plaintiff, a dock labourer, was employed by the stevedore and engaged with Davis, one of the crew of the ship, in unloading, by means of one of the winches of the vessel. The plaintiff was injured through the negligence of Davis in working the winch. Davis was paid by the defendants, but his wages were deducted from the stevedore's bills. All the unloading was under the control of the stevedore and his foreman. The stevedore provided the labour, and he would have had to get labour elsewhere if the ship had not found men. The shipowner selected such members of the crew as were to be employed in unloading, but the stevedore selected the work for them, and had control over them. The Court thought that the defendants were not liable, on the ground that Davis was not doing the work, and was not under the control, of the defendant.

The question here is, whether Davis, who caused the mischief, was employed at the time in doing Kennedy's work or the shipowner's. It is possible that he might have been the servant of both, but the facts here seem to negative that. The rule, out of which this case forms an exception, that

(*r*) (1860), 5 H. & N. 143, 149. Channell, B., then Serjt., was counsel for the defendant Fox.

(*s*) [1891] A. C. 371; per Lord Herschell, at p. 379, and Lord Watson, at p. 383.

(*t*) (1870), L. R. 6 C. P. 24. This case turns not so much on the doctrine of common employment as on the fact that Davis was not acting as defendant's servant; and it was not necessary to decide that the plaintiff and Davis were fellow-servants.

a servant or workman has no remedy against his employer for an injury sustained in his employ through the negligence of a fellow-servant or workman, is subordinate to another rule, and does not come into operation until a preliminary condition be fulfilled: it must be shown that if the injury had been done to a stranger, he would have had a remedy against the person who employed the wrongdoer. . . . It was Kennedy's work he was employed upon, and under Kennedy's control (*n*).

Rourke v. White Moss Co. (*x*) ought here to be noticed. The defendants, owners of a colliery, were engaged in sinking a shaft, and for that purpose had employed among other workmen the plaintiff. After they had carried on the work for some time, they entered into a contract with one Whittle to complete the sinking. Whittle was to provide all the labour, and the company were to put at the disposal of Whittle the necessary engine and to pay the engineer's wages. Lawrence, the engineer, was employed by the defendants and paid by them. Owing to his having fallen asleep and not stopped the engine at the proper time, the plaintiff was severely injured. Both the Common Pleas and the Court of Appeal thought that the plaintiff could not recover. In the former the decision was placed by Coleridge, C. J., Archibald, J., and Lindley, J., on the ground that both the plaintiff and Lawrence were the servants of Whittle.

He (Lawrence) was originally, and may be now, in the employment of the defendants; but the work he had to do at the time of the accident was a necessary part of the work to be done under Whittle's contract. He was at that time working under the direction of Whittle, the working of the engine being a part of one operation, the whole of which was being done by Whittle. The plaintiff therefore was clearly the servant of Whittle, and Lawrence also was in one sense the servant of Whittle, inasmuch as he was working under his orders, and subject to his control, although his wages were paid by the defendants (*y*).

"The real question," said Archibald, J., "is whether Lawrence was in the service of Whittle or in that of the defendant. For this purpose, I think he was in the service of Whittle." Cockburn, C. J., put his decision on the same grounds. But the judgments of Mellish, L. J., and Baggallay, J. A., seem to go no further than deciding that at the time of the accident Lawrence was not acting as the servant of the defendants; and it is submitted that the case does not decide that the plaintiff was the

(*n*) Per Willes, J., *l. c.* at p. 27.

(*x*) (1876), 1 C. P. D. 556; (1877), 2

C. P. D. 205.

(*y*) Per Coleridge, C. J., *l. c.* at p. 559.

fellow-servant of Lawrence. In his judgment Mellish, L. J., observes—

The effect of this agreement was that the whole job was lent out to Whittle, but the engine was to assist him in doing the work, and the engineer, though remaining the general servant of the defendants and paid by them was, while working at this shaft, to act under the control and orders of Whittle. That, in my opinion, makes the acts of Lawrence, while working the engine, the acts of Whittle and not of the defendants. Lawrence's duty, according to the orders of Whittle, was to have stopped his engine at the proper time, and not doing this, he was negligent in not obeying the orders of Whittle, and this in law amounted to the negligent act of Whittle. It follows, therefore, that the defendants are not liable; and it is unnecessary to consider whether the plaintiff was the fellow-servant of Lawrence in Whittle's employ.

Baggallay, J. A., thought the defendants not liable on the same ground, namely, that Lawrence was acting as servant to the contractor, and did not express any opinion upon the question of common employment.

In *Abraham v. Reynolds* (z) the plaintiff, a servant of J. & Son, went to defendants' warehouse to fetch cotton for defendants, whose cotton was always carted by J. & Son. The bales were lowered by defendants' men into a lorry, and by the negligence of one of the defendants' men a bale fell and hurt the plaintiff. The Court thought the defence of common employment not open to the defendants because (according to Pollock, C. B.), though the workmen had a common object, they had separate ends and for some purposes antagonistic interests; because (according to Martin, B.)—and this is the true ground in law—the defendants were not masters of the plaintiff; and because (according to Watson, B.) they were “persons doing work for a common object, but not under the same control or by the same orders.” In *Warburton v. Great Western Railway* (a), the Court of Exchequer took the view that a porter of the London and North Western Railway Company, and an engine-driver in the service of the defendants, were not fellow-servants within the meaning of the rule, though both companies used the station, which belonged to the London and North Western Company, and the servants of the defendants were subject to the rules of the London and North Western Railway Company and to the control of a stationmaster, a servant of the latter (b). In the subsequent case of *Swainson v.*

(z) (1860), 5 H. & N. 143.

(a) (1866), L. R. 2 Ex. 30.

(b) Warburton was not the servant of the Great Western Railway Company.

North Eastern Rail. Co. (c), the Court of Appeal, reversing the Exchequer Division, held that an engine-driver of the defendants and a signalman of the Great Northern Railway Company were not fellow-servants in the following circumstances: The station of the defendants and that of the Great Northern Company abutted upon each other and were approached by parallel lines of rails. The plaintiff was a signalman engaged and paid by the Great Northern Company and wearing their uniform. But his duty was to attend to the trains of both companies. While an engine of the defendants was upon the lines of the Great Northern Company, the driver negligently ran over the plaintiff. The Court held that the plaintiff and the driver were not engaged in a common employment.

The law on this point has been much simplified by the decision of the House of Lords in *Johnson v. Lindsay (d)*. In that case the plaintiff was employed by H. & H., a firm of builders: the defendants, who were ironfounders, were executing, under a contract with the architect, certain fire-proof portions of the houses being built by H. & H. The defendants were in no way under the control of H. & H. A servant of the defendants negligently let fall a bucket on the plaintiff and injured him. The House of Lords held that there was no common employment. Before this decision it would have been arguable that, *e.g.*, the driver in *Quarman v. Burnett (e)* was the fellow-servant of the hirer's footman: on the authority of *Woodhead v. Gartness Mineral Co. (f)* he would have been so held. But *Johnson v. Lindsay (d)* has limited the doctrine by laying down that "unless the person sought to be rendered liable for the negligence of his servant can show that the person so seeking to make him liable was himself in his service, the defence of common employment is not open to him." On this principle the driver in *Quarman v. Burnett (e)* was not the fellow-servant of the hirer's footman; this would follow from the decision in that case, which was that the driver was not the hirer's servant. *Laugher v. Pointer (g)* and *Rourke v. White Moss Colliery Co. (h)* no longer seem inconsistent. In the former case there was no

Had an engine-driver of the Great Western Railway Company been suing the L. & N. W. Railway Company for the negligence of their signalman, the decision might have been different.

(c) (1878), 3 Ex. D. 341. See *Turner v. Great Eastern Rail. Co.* (1875), 33 L. T. 431.

(d) [1891] A. C. 371.

(e) (1840), 6 M. & W. 499.

(f) (1877), 4 R. 469, overruled in *Johnson v. Lindsay, ubi supra*.

(g) (1826), 5 B. & C. 547.

(h) (1876), 1 C. P. D. 556; 2 C. P. D. 205.

evidence of such control as would make the coachman the defendant's servant; in the latter case there was such control by a third person as made the engineer that third person's servant. "Common employment," in English law (*i*), therefore means employment in furtherance of a common object in the common service of the person sought to be made liable (*k*), and the difficulty will generally be to decide on the evidence whether the plaintiff was servant of the defendant (*l*). Of course if the negligent person is not the defendant's servant, the defendant will not be liable, on the grounds stated by Willes, J., in *Murray v. Currie* (*m*).

Common employment is not available as a defence to an action based upon the breach of an unqualified statutory duty (*n*).

As the reason generally given for the non-liability of a master for injuries sustained by servants through the negligence of fellow-servants is the existence of a tacit agreement on the part of the former to accept all the ordinary risks attending their service, it might seem to be proper to confine this exemption to cases in which a contract of service exists. This, however, has not been done. Volunteers are treated as if they were servants. A clerk in the employment of Messrs. Pickford, carriers, voluntarily assisted the servants of a railway company in turning a truck on a turn-table. By the negligence of one of the company's servants he was killed. Such were the main facts in *Degg v. Midland Rail. Co.* (*o*); and the Court of Exchequer came to the conclusion that the deceased by volunteering his services could not have any greater rights or impose greater duties on the defendants than would have existed if he had been a hired servant. It was urged that the plaintiff was a trespasser or wrongdoer. The cases of *Bird v. Holbrook* (*p*) and *Lynch v. Nurdin* (*q*) were cited in support of the contention that Degg, though a wrongdoer, could maintain an action. But the Court overruled this argument, on the ground

(*i*) The Scotch law is, by the joint effect of the decisions in the *Bartonshill* case (1868), 3 Macq. 266, and *Wilson v. Merry* (1868), 1 H. L. (Sc.) 326, as explained in *Johnson v. Lindsay*, the same on this point as the English. See, for a history of the Scotch decisions, Lord Watson's judgment in *Johnson v. Lindsay*, *ubi sup.*, at pp. 385—387.

(*k*) See *Cameron v. Nystrom*, [1893] A. C. 308; *Union Steamship Co. v. Claridge*, [1894] A. C. 185.

(*l*) See pp. 12 *et seq.*, *supra*.

(*m*) (1870), L. R. 6 C. P. 24. See p. 285, *supra*.

(*n*) *Groves v. Lord Wimborne*, [1898] 2 Q. B. 402.

(*o*) (1857), 1 H. & N. 773. In *Cleveland v. Spier* (1864), 16 C. B. N. S. 399, a man working at pipes in a high-way asked a passer-by for advice, which was adopted, as to the mode of doing the work. The passer-by was injured by the workman's negligence in doing the work. *Held*, that the passer-by was not a "volunteer assistant" so as to come within the principle of *Degg's* case.

(*p*) (1828), 4 Bing. 628.

(*q*) (1841), 1 Q. B. 29.

that a man could not by his own wrong impose a duty. This decision received the approval of the Exchequer Chamber in the subsequent case of *Potter v. Faulkner (r)*. There the plaintiff had, at the request of the defendant's servant, assisted him in putting bales of cotton into a lorry, and was injured while so doing. The Exchequer Chamber expressed the opinion that *Degg v. Midland Rail. Co.* was well decided. Erle, C. J., in delivering the judgment of the Court, said with respect to the rights of a volunteer:—

Such an one cannot stand in a better position than those with whom he associates himself in respect of their master's liability: he can impose no greater liability upon the master than that to which he was subject in respect of a servant in his actual employ.

In this instance the plaintiff lent his assistance at the request of a servant who had no authority to employ (s). But if the plaintiff has an interest in the operation at which, with the defendants' consent, he assists, it is different. Thus, when a person who had sent a heifer by rail to Penrith Station assisted in shunting into a siding, with the assent of the station-master, the horse-box in which the heifer was, it was held that he was not a volunteer in the sense of the decision in *Degg v. Midland Rail. Co.*, and that he could recover from the defendants for the negligence of their servants (t). He only did for himself, with the permission of the company, what they were bound by contract to do for him.

A master is responsible to his servant for injuries sustained by reason of the master's own personal negligence (u).

(r) (1861), 1 B. & S. 800.

(s) In such cases the authority of the servant may be a material point: see *Flores v. Pennsylvania Rail. Co.* (1871), 69 Pa. St. 210; *Little v. Neilson* (1855), 17 D. (2nd ser.), 310.

(t) *Wright v. London and North Western Rail. Co.* (1875), L. R. 10 Q. B. 298; 1 Q. B. D. 252. This followed the previous decision. *Holmes v. North Eastern Rail. Co.* (1869), L. R. 4 Ex. 254; (1871), L. R. 6 Ex. 123. (A con-ignee of a coal waggon went to it with the permission of the station master and took some coal. Having then stepped down upon the flagged way, he was injured by one of the flags giving way;

entitled to recover, though he was not unloading in the usual way.) See also *Wyllie v. Caledonian Rail. Co.* (1871), 9 M. 463. (A driver in employment of cattle dealer was engaged along with servant of defendants in putting his master's cattle into a truck at a siding; an engine, driven by one of defendants' servants, pushed a waggon against the truck; defendants liable.)

(u) "For his own personal negligence a master was always liable and still is liable at Common Law both to his own workmen and to the general public who come upon his premises at his invitation on business in which he is concerned": per Bowen, L. J., in *Thomas v. Quartermaine* (1887), 18 Q. B. D. 685, 691.

This liability is incurred chiefly upon one of three grounds :—

- (i.) If the master personally interfere with the work ;
- (ii.) If the master choose his workmen or foremen carelessly ;
- (iii.) If the master provide unsafe premises or defective plant or tools.

(i.) *Personal Interference of the Master.*

In *Ashworth v. Stancliffe & Walker* (x) the two defendants were lessees of a coal mine and in partnership. One of them acted as banksman. A tram-plate fell down the pit and injured the plaintiff. It was proved that the banksman's attention had been called to the loose state of the plate, and the jury found that he was guilty of negligence. The Court held that he was liable in respect of his personal negligence, and that the other defendant was liable as partner. The master is not bound to do his work himself. "He has not contracted or undertaken," says Lord Cairns in *Wilson v. Merry* (y), "to execute in person the work connected with his business," but "to select proper and competent persons to do so, and furnish them with adequate materials and resources for the work." But if a master choose to do his work in person, or if he personally interfere with the execution of work, he will incur responsibility to his servants for his own negligence. He will not be regarded as a fellow-servant because he works with them (z).

(ii.) *Careless Choice of Servants.*

The master will be liable, not because his servants are incompetent, but because he has been personally negligent in choosing them. "Negligence cannot exist if the master does his best to engage competent persons ; he cannot warrant the competency of his servants" (a). Thus, if the master delegate the choice of servants (b), or the duty of giving instruction and warning regarding a dangerous process (bb), to a competent foreman he is not liable

(x) (1861), 3 E. & E. 701.

(y), (1868), L. R. 1 H. L. Sc. 326, 332.

(z) *Mellors v. Shaw* (1861), 1 B. & S. 437. (One of the defendants, owners of coal mines, acted personally as superintendent ; he took no pains to make the shaft safe, though it was pointed out to him that it was unsafe ; defendants liable to a miner injured by the fall of a stone.) *Roberts v. Smith* (1857), 2 H. & N. 213. (One of the defendants told plaintiff to use certain logs, which were rotten, to build a scaffold with.)

(a) Per Lord Cairns in *Wilson v. Merry*, *ubi sup.*, p. 332, approving *Tarrant v. Webb* (1856), 18 C. B. 797 ; *Smith v. Howard* (1870), 22 L. T. (N. S.) 130. (Defendant not liable to his workman for injuries caused by the negligence of a competent foreman in not discharging an incompetent fellow-workman after complaint made.)

(b) *Smith v. Howard* (1870), 22 L. T. (N. S.) 130.

(bb) *Cribb v. Kynoch*, [1907] 2 K. B. 548 ; *Young v. Hoffmann Manufacturing Co., Ltd.*, [1907] 2 K. B. 646.

for that foreman's negligence in engaging or retaining an unskilful workman, or in failing to warn and instruct. The fact that a person known to be without experience was employed as an engine-driver, or in some other post requiring skill (*c*), or that an habitual drunkard, who was known, or with reasonable care, must have been known as such to the defendants, was placed in a position of great responsibility, would be proof of negligence (*d*). No doubt, too, a master is bound to provide sufficient servants for the work; though if a servant were to continue in a workshop or factory with full knowledge of this deficiency, he would be taken to have accepted the risk. In *Sarton v. Hauckesworth* (*e*), the evidence was that five steam engines, some of them situated apart from each other, were attended to by only two men; one of the engines "ran away," or revolved too fast, and the plaintiff, who was a sheet roller in the defendant's works and had been such for three years, was thereby injured. The Exchequer Chamber held that, assuming the accident might have been prevented had more men been employed, he could not recover.

(iii.) *Unsafe Premises; Defective Plant or Tools.*

The liability of an employer for defects of this kind, due to a superintendent's negligence, was greatly enlarged by the Employers' Liability Act, 1880; and in claims under the Workmen's Compensation Act, 1906, the liability is altogether independent of negligence; but it is still necessary to enquire what is the Common Law.

A humane employer, anxious for the safety of his workmen, would be vigilant even if they were careless, and would seek to save them from perils which they were ready to face. The Common Law, however, does not require an employer to do this. The question was considered by the House of Lords in *Paterson v. Wallace* (*f*), which was decided in 1854. This was a claim by the widow and children of a miner, who had been accidentally killed by the fall of a stone from the roof while working in a coal-pit as a servant of the defendant. The deceased man and other workmen had complained to the manager of the danger arising from this very stone; the manager finally sent to have it removed; the deceased

(*c*) Shearman and Redfield on *Negligence* (5th ed.), ss. 190, 191.

(*d*) *Gilman v. Eastern Rail. Co.*, 92 Mass. 233. (Evidence that defendants employed an habitual drunkard as switchman.) See the report of the

trial of this case in 95 Mass. 433.

(*e*) (1872), 26 L. T. (N. S.) 851; *Skipp v. Eastern Counties Rail. Co.* (1853), 23 L. J. Ex. 23.

(*f*) *Paterson's Scotch Appeals*, i. 389; 1 Macq. 748.

man, without waiting, went to work and was killed. The Lord Justice Clerk, on this evidence, withdrew the case from the jury. Lord Cranworth laid it down that the plaintiffs had to establish two propositions, viz., (i.) that the stone had become dangerous owing to the negligence of the master; and (ii.) that the workman was killed owing to that negligence and not because of his own rashness; and he held that there was evidence for the jury on both points. He states the law thus:—

When a master employs a servant in a work of a dangerous character, he is bound to take all reasonable precautions for the safety of that workman. This is the law of England no less than the law of Scotland. It is the master's duty to be careful that his servant is not induced to work under a notion that tackle or machinery is staunch or secure when in fact the master knows, or ought to know, that it is not so. And if, from any negligence in this respect damage arise, the master is responsible (*g*).

This decision, it is submitted, involves the proposition that the master cannot delegate this duty: otherwise it would conflict with *Priestley v. Fowler* (*h*) at least as that case has been understood in England (*h*).

In *Brydon v. Stewart* (*i*) a miner was killed while going up the shaft by a falling lump of coal or ironstone. The jury found that the pit was unsafe, and that the accident was caused thereby. It was held to be no defence that the miner was, at the time, leaving the shaft for his own business and against the employer's interest.

The same question arose in 1861 in *Weems v. Mathieson* (*k*). A workman had been injured by the fall of a cylinder which had been suspended between three shear poles by means of a chain. Lord Campbell and Lord Wensleydale pointed out that the contract of hiring implied no warranty of the perfect character of the machinery; and the former was careful to say that to make the defendants liable it must be shown that the weakness in the glands or bolts used in hoisting the cylinder "did not arise from any inherent secret defect, and that it was known, or might by the exercise of due skill and attention have been known, to the defendant, who was the employer of the deceased." "I take it to be perfectly clear," said Lord Wensleydale, "that in these cases there is no warranty. All that the master is bound to do is to provide machinery fit and proper for the work, and to take care to

(*g*) *Ibid.* 751.

(*h*) See Lord Cranworth's remarks, and note (*a*), on p. 751, 1 Macq. And

see p. 297, *infra*.

(*i*) (1855), 2 Macq. 30; 1 Pat. 447.

(*k*) 1 Pat. 1044; 4 Macq. 215.

have it superintended by himself or his workmen in a fit and proper manner " (*l*).

This liability was extended in *Smith v. Baker* (*m*) to a defective system of working sound machinery.

It does not appear to me to admit of dispute that, at Common Law, a master who employs a servant in work of a dangerous character is bound to take all reasonable precautions for the workman's safety. This rule has been so often laid down in the House by Lord Cranworth and other noble and learned lords, that it is needless to quote authorities in support of it. But, as I understand the law, it was also held by the House, long before the passing of the Employers' Liability Act (43 & 44 Vict. c. 42), that a master is no less responsible to his workmen for personal injuries occasioned by a defective system of using machinery, than for injuries caused by a defect in the machinery itself. In *Sword v. Cameron* (*n*) the First Division of the Court of Session found a master liable in damages to a quarryman in his employment who was injured by the firing of a blast before he had time to reach a place of shelter, although it was proved that the shot was fired in accordance with the usual and inveterate practice of the quarry. That case was cited in *Bartonshill Coal Co. v. Reid* (*o*) in support of the proposition that the doctrine of collaborateur was unknown to the law of Scotland; but Lord Cranworth pointed out (*p*) that the decision did not turn upon the negligence of the fellow-workman, who fired the shot, and expressly stated that it was justifiable on the ground that "the injury was evidently the result of a defective system not adequately protecting the workmen at the time of the explosions." The Lord Chancellor expressed the same view in *Bartonshill Coal Co. v. McGuire* (*q*). The judgment of Lord Wensleydale in *Weems v. Mathieson* (*r*) clearly shows that the noble and learned lord was also of opinion that a master is responsible in point of law not only for a defect on his part in providing good and sufficient apparatus, but also for his failure to see that the apparatus is properly used (*s*).

And Lord Herschell, in the same case (*t*), says:—

It is quite clear that the contract between employer and employed involves on the part of the former the duty of taking reasonable care to provide

(*l*) A master is not bound to supply his workmen with a complete set of all the most lately invented and most highly finished to us. The point is thus stated in an American case: the machinery must be "such as is ordinarily used by persons in the same business and such as can with reasonable care be used without danger to the employé": *Lehigh Coal Co. v. Hayes*, 128 Pa. St. 294; 15 Am. St. R. 680. Mr. Beven suggests, and with reason, that with regard to ropes, buckets, &c., and all the commoner appliances of industry, when a master has supplied a stock of them together with the means of repair, he can leave the matter to the workmen's judgment, without fear of lia-

bility, always supposing that the workmen are in as good a position to judge as himself. This is the American rule. See Beven's *Negligence in Law* (2nd ed.), 763; and see *ibid.* pp. 740-1.

(*m*) [1891] A. C. 325. (Stones were jibbed over the plaintiff's head by men working in another department over which the plaintiff had no control.)

(*n*) (1839), 1 Sc. Sess. Cas. (2nd ser.), 493.

(*o*) (1858), 3 Macq. 266, 273.

(*p*) *l. c.* 289-90.

(*q*) (1858), 3 Macq. 300, 310.

(*r*) 1 Pat. 1044; 4 Macq. 215.

(*s*) Per Lord Watson in *Smith v. Baker*. [1891] A. C. 325, 363.

(*t*) *Ibid.* p. 362.

proper appliances, and to maintain them in a proper condition, and so to carry on his operations as not to subject those employed by him to unnecessary risk. Whatever the dangers of the employment which the employer undertakes, amongst them is certainly not to be numbered the risk of the employer's negligence, and the creation or enhancement of danger thereby engendered.

A master is plainly liable when he knowingly fails to supply the plant reasonably necessary for the workman's safety (*t*) ; or when, as in *Williams v. Clough* (*u*) and *Roberts v. Smith* (*x*), he supplies articles for use by his servants knowing them to be unsafe. Ignorance is not, however, always an excuse. The master may be under "a duty to know" ; he may be liable for neglecting the means of knowledge. In *Murphy v. Phillips* (*y*) it was proved that the plaintiff, a stevedore in the defendant's service, was injured by reason of the breaking of a chain belonging to the defendant's ship. The chain was worn ; it had been in use for seven years, and it had not been tested in the usual way during that time. The jury found that the chain was not in a fit state for the work ; that the defendant did not know of the defects in the chain ; but that he might have discovered them had he chosen to examine it. In these circumstances, though he took no part in the work, he was held to be liable. "He might," said Cleasby, B., "have appointed a fit and competent person expressly to superintend and see to the examining and testing of the chain, and had he done so he would of course have been himself exempt from liability ; or he might have examined the state of the chain himself." So in *Webbe v. Rennie* (*z*) a scaffold-pole had remained, unexamined, in the earth for two years, and had rotted : the master was held liable for injuries caused to his workman by the breaking of the pole.

The servant had a right to expect that he shall only be exposed to the ordinary risks of the employment, and that the machinery or apparatus about which he is to be employed, and out of which danger arises, shall be attended to with reasonable care, to insure it being in a fit state to be worked without undue or extraordinary danger to those employed in or about it ; and although in general an employer was not liable unless he knew of the

(*t*) *Williams v. Birmingham Battery and Metal Co.*, [1899] 2 Q. B. 338.

(*u*) (1858), 3 H. & N. 258.

(*x*) (1857), 2 H. & N. 213.

(*y*) (1876), 35 L. T. (N. S.) 477. In *Hanrahan v. Ardnamult, &c.* (1887), 22 L. R. I. 55—case of a defective bolt—Palles, C. B., says : "If the defendants

knew or ought to have known of the condition of the bolt, there was evidence of negligence on their part" ; and distinguishes that case from *Murphy v. Phillips*, on the ground that there was no evidence as to the defendant's duty in the circumstances to inspect.

(*z*) (1865), 4 F. & F. 608.

danger, yet it was his business to know if, by reasonable care and precaution, he could ascertain whether the apparatus or machinery were in a fit state or not. It was not enough, therefore, that the master did not know of the danger if, by reasonable care, he might have known, and if, reasonably, he ought to have known, and to have taken the proper means of knowing (*a*).

Griffiths v. London and St. Katharine Docks Co. (*b*) was a case of injury to a workman by reason of his employers' negligence in having unsafe premises; and it was there decided that, in such cases, the statement of claim, in order to show a *prima facie* cause of action, must aver both the master's knowledge and the servant's ignorance. This rule, it is submitted, does not apply to cases of "personal negligence" or "breach of duty to know" on the part of the master. In *Williams v. Birmingham Battery and Metal Co.* (*c*) the employers had knowingly failed to supply certain plant, and so exposed their workmen to unnecessary risk. The jury found, *inter alia*, that the deceased workman had the same means of knowing of the danger as the defendants (*d*). It was argued that this finding, in view of the decision in *Griffiths v. London, &c. Docks*, entitled the defendants to judgment. The Court of Appeal thought not.

This is not the case where a master has provided proper appliances and done his best to maintain them in a state of efficiency, in which case the man has no action against his master if the appliances became unsafe whereby the man has been injured, unless he avers and proves that the master knew of their having become unsafe, and that the man was ignorant of it: *Griffiths v. London and St. Katharine's Docks* (*e*).

(*a*) *Ibid.*, per Cockburn, C. J., p. 612. See *Vaughan v. Cork & Youghal Rail. Co.* (1860), 12 Ir. C. L. R. 297. Plaintiff, while working for the defendants, injured by the fall of a wall which had become ruinous, and which was "in the possession and under the control and dominion of the defendants.")

(*b*) (1884), 13 Q. B. D. 259. See *Davies v. Eynland* (1866), 23 L. J. Q. B. 321. (Plaintiff injured by cutting up diseased carcasses for defendant, who knew, while plaintiff did not know, of the disease: defendant liable. Two counts, not alleging knowledge by the defendant, held bad.)

(*c*) [1899] 2 Q. B. 338. And see the remarks of Cockburn, C. J., in *Webbe v. Rennie*, quoted above.

(*d*) See per Bramwell, B., in *Williams v. Clough*, 3 H. & N. 258, 260.

(*e*) Per A. L. Smith, L. J., *ibid.* p. 343. There is no hint of any such limitation in the judgments in *Griffiths v. London, &c.*; and see the remarks of Bramwell, B., in *Williams v. Clough*, 3 H. & N. 258, and *Dyren v. Leach*, 26 L. J. Ex. 221; but on any other footing, *Murphy v. Phillips* and *Webbe v. Rennie* are inexplicable. In *Groves v. Fuller* (1888), 4 Times L. R. 474, the defective boiler had been overhauled by an admittedly competent engineer. The tendency of the cases is to extend the master's liability, and, at any rate since *Smith v. Baker*, [1891] A. C. 325, to regard the knowledge of the plaintiff merely as an element in the defence of "*volenti non fit injuria*": *Williams v. Birmingham Battery, &c.*, *ubi sup.*

The master's duty to his servant as to the safety of his premises (*f*) is the same as that owed by an occupier of property towards any member of the public coming, by invitation, express or implied, on his premises on business of common interest (*g*). He must "use reasonable care to prevent damage from unusual danger, which he knows or ought to know" (*h*).

It was, at one time, not quite clear whether the master could delegate these duties as to plant, premises, and the choice of servants. *Paterson v. Wallace* (*i*), as has been said, seems to involve the proposition that he cannot do so; otherwise the defendant in that case would have escaped liability on the ground of common employment; for it was the manager who was in fault (*k*). So does the language in some of the judgments in *Holmes v. Clarke* (*l*); but that decision has been frequently criticised, and is unsatisfactory in view of the diversity of grounds underlying the several judgments (*m*). But some remarks of Byles, J., in that case should be noticed:—

Why may not the master be guilty of negligence by his manager or agent, whose employment may be so distinct from that of the injured servant,

(*f*) *Paterson v. Wallace* (1854), 1 Macq. 748; *Brydon v. Stewart* (1855), 2 Macq. 30; *Mellors v. Shaw* (1861), 1 B. & S. 437; *Brown v. Accrington Cotton Co.* (1865), 3 H. & C. 511; *Feltham v. England* (1866), L. R. 2 Q. B. 33.

(*g*) Except in so far as the contract of hiring and service implies a special acceptance of risk.

(*h*) *Indermaur v. Dames* 1866), L. R. 1 C. P. 274, 288, per Willes, J. His duty is independent of contract. See, for other instances, *Holmes v. North Eastern Rail. Co.* (1869), L. R. 4 Ex. 254; L. R. 6 Ex. 123; *Miller v. Hancock*, [1893] 2 Q. B. 177. This liability also arises out of the use of movable property: *Heaven v. Pender* (1883), 11 Q. B. D. 503 (a dock company liable to painters for the condition of a painting-stage supplied for the painting of a ship in their dock); *Elliott v. Hall* (1885), 15 Q. B. D. 315 (seller of coals liable for defective truck, in which the coals were sent, to purchaser's servant); *Marmy v. Scott*, [1899] 1 Q. B. 986 (charterer liable to stevedore's man for allowing him to use defective ladder; charterer had not made any inspection of the ship; slight inspection would have shown the defective state of the ladder. "A man who intends that others shall come upon property of which he is the occupier for purposes of work or business in which he is interested, owes a duty to those who do so come to use

reasonable care to see that the property and the appliances upon it, which it is intended shall be used in the work, are fit for the purpose to which they are to be put, and he does not discharge this duty by merely contracting with competent people to do the work for him. If the parties with whom he so contracts fail to use reasonable care, and damage results, the occupier still remains liable:" per Bigham, J.) In *Mowbray v. Merryweather*, [1895] 1 Q. B. 857, and 2 Q. B. 640, a firm of stevedores sued a shipowner for breach of warranty in supplying a chain not reasonably fit for the purpose of discharging the cargo. A servant of the plaintiffs was injured by using the defective chain and had sued the plaintiffs, who paid him 125*l*. Held:—that the plaintiffs could recover that sum from the defendants.

(*i*) (1854), 1 Macq. 748.

(*k*) It may be said that the point in that case was whether the carelessness of the workman himself caused his death. But "common employment" was present to Lord Cranworth's mind; see his remarks *l. c.* p. 751; and see Beven's *Negligence in Law* (2nd ed.), p. 738.

(*l*) 6 H. & N. 349; 7 H. & N. 937.

(*m*) *E.g.*, (1) Statutory liability (see per Bowen, L. J., in *Thomas v. Quartermaine*, 18 Q. B. D. at p. 696); (2) personal negligence of the master; (3) liability of master for his manager's acts.

that they cannot with propriety be deemed fellow-servants? And if a master's personal knowledge of defects in his machinery be necessary to his liability, the more a master neglects his business and abandons it to others, the less will he be liable.

The distinction between a manager and a fellow-servant suggested in the earlier part of this passage cannot be supported, at any rate since the decisions in *Wilson v. Merry* (*n*) and *Howells v. Landore Siemens Steel Co.* (*o*), while the latter part overstates the point at issue. The master's personal knowledge is not necessary; he has, in certain circumstances, a "duty to know." But how can that duty be better discharged than by the appointment of a competent overseer? The rule of English law seems to be this:—These duties, primarily personal to the master, as to the maintenance of the safety of premises and of the soundness of plant and machinery, and that machinery's proper use, may be delegated by the master, in which case he will only be liable on proof that (1) the person to whom they were delegated is incompetent, *and* that (2) the master did not take due care in the choice of that person.

What the master is, in my opinion, bound to his servant to do in the event of his not personally superintending and directing the work, is to select proper and competent persons to do so, and furnish them with adequate materials and resources for the work (*p*).

Of course the incompetence of the person selected may be such as to raise a presumption, though a rebuttable presumption, of negligence in the selection (*q*). The performance of an absolute statutory duty cannot be delegated (*r*). Corporations as such cannot interfere personally, and must always act by servants. Does that fact make any difference? Apparently not. They are, for the purposes of the liability now under consideration, in the same position as any other master (*s*). In *Allen v. New Gas Co.* (*t*) the

(*n*) 1868, L. R. 1 H. L. Sc. 326.

(*o*) 1874, L. R. 10 Q. B. 62.

(*p*) Per Lord Cairns in *Wilson v. Merry*, *ubi sup.*, at p. 332.

(*q*) As to choice of servants, see *Tarrant v. Webb* (1856), 18 C. B. 797; *Ormond v. Holland* (1858), E. B. & E. 102; *Smith v. Howard* (1870), 22 L. T. (N. S.) 130. As to soundness of plant and materials, their inspection and maintenance, *Wignacore v. Jay* (1850), 5 Ex. 351; *Webb v. Renner* (1865), 4 F. & F. 608; *Murphy v. Phillips* (1876), 35 L. T. (N. S.) 177. As to safety of premises, *Filtham v. England* (1860), L. R. 2 Q. B. 33; *Brown v. Accrington Spinning Co.* (1865), 3 H. & C. 511;

Allen v. New Gas Co. (1876), L. R. 1 Ex. D. 251.

(*r*) *Groves v. Wimborne*, [1898] 2 Q. B. 402.

(*s*) See the remarks of Blackburn, J., *arguendo* in *Howells v. Landore, &c.*, L. R. 10 Q. B. 62, 63. And see *Pen-hallow v. Morsey Docks, &c.* (1861), 30 L. J. Ex. 329, where, however, it was assumed that the negligence of the defendants' servants was the defendants' negligence, and the real question was whether an averment of negligence could be supported by evidence of nothing more than neglect of the means of knowledge.

(*t*) (1876), L. R. 1 Ex. D. 251. This

defendants were held not liable on the ground that incompetence of the defendants' foreman was not proved, and that the negligence, if any, was that of the plaintiff's fellow workmen.

In America the rule is different. There the Courts treat a servant, when representing the master and while acting as such representative, as a vice-principal, for whose negligence the master remains liable (*u*).

A servant has no cause of action against his master (1) if he is injured by risks, which he has agreed, expressly or by implication, specifically to accept; or (2) if his own negligence have contributed to the injury of which he complains.

(1) In the early cases there was a confusion between acceptance of risks and contributory negligence—a confusion dispelled by the decisions in *Thomas v. Quartermaine* (*x*) and *Smith v. Baker* (*y*). There has been a change in the character of the decisions as to the application of the first of these defences. For a time the Courts applied the maxim *volenti non fit injuria*, as if it were equivalent to *scienti non fit injuria*. A servant who chose to work with full knowledge that the machinery or plant which he used or the place in which he worked was dangerous, could not recover in the event of his being injured. *Griffiths v. Gidlow* (*z*) illustrates this view; and the arguments for it are stated, with his customary clearness, by Lord Bramwell in his dissenting judgment in *Smith v. Baker* (*a*). But the later cases have made it clear that mere knowledge of the risks or dangers to be encountered is not equivalent to acceptance of such risks.

is an unsatisfactory decision. See the discussion in Beyer's *Negligence in Law* (2nd ed.), 786, 787.

(*u*) See Shearman and Redfield on *Negligence* (5th ed.), s. 226. And see *ibid.*, s. 231; and *Crispin v. Rabbitt* (1880), 81 N. Y. 516, on the question as to who are vice-principals and when a servant acts as such. The principle seems to have been very largely accepted in the different States. See Shearman and Redfield, s. 232, and the cases collected in the notes on ss. 232-233a, *ibid.*

(*x*) (1887), 18 Q. B. D. 685. "The

doctrine of *volenti non fit injuria* stands outside the defence of contributory negligence and is in no way limited by it." . . . "Contributory negligence arises when there has been a breach of duty on the defendant's part, not when *ex hypothesi* there has been none:" per Bowen, L. J., *ibid.*, at p. 697. See *Osborne v. London & North Western Rail. Co.* (1888), 21 Q. B. D. 221.

(*y*) [1891] A. C. 325.

(*z*) (1858), 3 H. & N. 648.

(*a*) [1891] A. C. 325, at p. 341, *et seq.*

In order to defeat a plaintiff's right by the application of the maxim relied on, who would otherwise be entitled to recover, the jury ought to be able to affirm that he consented to the particular thing being done which would involve the risk, and consented to take the risk upon himself (*b*).

The application of the maxim is not difficult where the injury arises out of risks necessarily involved in the work undertaken by the plaintiff. "A person who is engaged to perform a dangerous operation takes upon himself the risks incident thereto" (*c*). In such cases there is no breach of duty on the part of the master; and, apart from further evidence, the plaintiff would have made out no case.

Even where there has been a breach of duty, this defence may be available; upon proof of the facts necessary to constitute this defence, the breach of duty becomes one of which the plaintiff has, in view of those facts, disentitled himself to complain. "The duty reaches its vanishing point" (*d*). Mere knowledge on the part of the plaintiff, as has been said, is not sufficient; "but when it is a knowledge under circumstances that leave no inference open but one, viz., that the risk has been voluntarily encountered, the defence seems to me complete" (*e*). It is at this point that the difficulty arises. For example, an employé observes an element of danger in his work and complains, but is induced to remain by his master's promise to remedy the defect. This man stands in a very different position from one who has never complained; though conceivably long acquiescence after complaint made might go to show that he accepted the risk (*f*). Often it is argued that the plaintiff was compelled to accept the risks; he was poor; he was afraid of being dismissed; he had no other employment open to

(*b*) Per Lord Halsbury in *Smith v. Baker*, [1891] A. C. 325, 338. Compare this with *Menbery v. Great Western Rail. Co.* (1889), 14 A. C. 179.

(*c*) Per Lord Herschell in *Smith v. Baker*, *l. c.*, at p. 360, who gives as an instance, "one who has agreed to take part in an operation necessitating the production of fumes injurious to health." And Lord Watson (*ibid.*, p. 367) instances those cases where the risk arises "from a defect in a machine, which the servant has engaged to work, of such a nature that his personal danger and consequent injury must be produced by his own act. If he clearly foresaw the likelihood of such a result, and, notwithstanding, continued to work, I

think that according to the authorities he ought to be regarded as *volens*."

(*d*) Per Bowen, L. J., in *Thomas v. Quartermaine* (1887), 18 Q. B. D. at p. 695.

(*e*) Per Bowen, L. J., *ibid.*, at p. 697.

(*f*) *Holmes v. Clarke* (1861), 6 H. & N. 349; *Holmes v. Worthington* (1861), 2 F. & F. 533. In *Farmouth v. France* (1887), 19 Q. B. D. 647, Lopes, L. J., regards the plaintiff's repeated complaints as "evidence of his thorough appreciation of the risk he was incurring and of his willingness to incur that risk rather than relinquish his employment." But see the judgments of Esher, M. R., and Lindley, L. J.

him (*g*). *Woodley v. Metropolitan Rail. Co.* (*h*) is a case in point. The plaintiff was a workman in the service of a contractor employed by the defendants, and set to work in a dark tunnel at a point where the line curved and trains frequently passed. After working for a fortnight, the plaintiff was knocked down by a passing train and injured. The jury found that the defendants had been guilty of negligence in not taking any measures to warn the plaintiff of the approach of trains. The Court of Appeal, by a majority of its members, reversed the decision of the Exchequer, and ordered judgment to be entered for the defendants on the ground that the plaintiff had consented to accept the risks incident to his employment.

The workman who depends on his employment for the bread of himself and his family is thus (*i.e.*, when masters are careless) tempted to incur risks to which, as a matter of humanity, he ought not to be exposed. But looking at the matter in a legal point of view, if a man, for the sake of the employment, takes it or continues in it with a knowledge of its risks, he must trust to himself to keep clear of injury (*i*).

This view, according to which knowledge is equivalent to consent, and which was enunciated by Lord Bramwell in *Smith v. Baker* (*k*), was not adopted by Mellish, L. J., in *Woodley's case* (*h*), and it is contrary to the principle laid down by the House of Lords in *Smith v. Baker* (*k*). In that case the plaintiff had been employed by railway contractors to drill holes in a rock cutting near a crane worked by men in the employment of the contractors. The crane was used to jib stones over the plaintiff's head and sometimes without warning. He had been employed for some months and was aware of the danger to which he was exposed. The County Court jury found *inter alia* that the defendants were guilty of negligence, and that the plaintiff did not undertake a risky employment with knowledge of its risks. Refusing to disturb the findings of the jury, the House of Lords held that the maxim *volenti non fit injuria* did not apply.

(*g*) *Thruswell v. Handyside* (1888), 20 Q. B. D. 359; but this decision followed the judgment of a Divisional Court in *Membery v. Great Western Rail. Co.*, which was subsequently reversed both in the Court of Appeal and the House of Lords (1889), 14 A. C. 179.

(*h*) (1877), 2 Ex. D. 384.

(*i*) Per Cockburn, C. J., *l.c.*, p. 389.

(*k*) [1891] A. C. 325. Lord Herschell (at pp. 365, 366) criticizes *Thomas v. Quartermaine* (*ubi sup.*), and states that that case assumed a breach of duty on the part of the defendant. But the *ratio decidendi* in that case was, in the words of Bowen, L. J. (*l.c.*, at p. 699), that "there was no evidence of negligence on which the County Court judge could act."

When, as is commonly the case, his acceptance or non-acceptance of the risk is left to implication, the workman cannot reasonably be held to have undertaken it, unless he knew of its existence, and appreciated or had the means of appreciating its danger. But assuming that he did so, I am unable to accede to the suggestion that the mere fact of his continuing at his work, with such knowledge and appreciation, will in every case necessarily imply his acceptance. Whether it will have that effect or not depends, in my opinion, to a considerable extent upon the nature of the risk and the workman's connection with it, as well as upon other considerations which must vary according to the circumstances of each case (*l*).

Evidence that the danger was misrepresented, or of the plaintiff's tender age (*m*), inexperience (*n*), or, it would seem, defective intelligence (*o*), would tend to raise an inference of non-appreciation of the risk, and render the maxim inapplicable.

The maxim does not apply exclusively to employer and employed (*p*), and the materiality of the relations of the parties is this—that by reference to them must be determined the nature and *quantum* of the duty, the breach of which is alleged by the plaintiff.

Where the master is under a statutory duty to take precautions the position is different. The plaintiff comes into Court with a stronger *prima facie* case, and the defendant has to prove more to raise a presumption of acceptance of risk than in the case of a duty at Common Law. In *Britton v. Great Western Cotton Co.* (*q*), a workman was fatally injured owing to the omission on the part of the defendants to fence a wheelrace, as required by the Factory Act (7 & 8 Viet. c. 15), s. 21. The defence was *colenti non fit injuria*. Bramwell, B., in the course of his judgment says:—

Here the plaintiff is not placed in the dilemma which arises when the action is for a breach of duty at Common Law. That dilemma is this: either the danger was obvious or it was not. If obvious, the servant must have known it as well as the employer; if it was not obvious, there was no negligence in the employer. That dilemma is not in the plaintiff's way here, for the duty is a statutory one. If the deceased dispensed with the perform-

(*l*) Per Lord Watson, *ibid.* p. 355. See per Lord Halsbury, *l. c.* p. 338; and Lord Herschell, at pp. 361, 362: and see *Williams v. Birmingham Battery and Metal Co.*, [1899] 2 Q. B. 338.

(*m*) *Grizzle v. Frost* (1863), 3 F. & F. 623.

(*n*) See *Spelman v. Fisher Iron Co.*, 56 Barb. N. Y. 151. And see the remarks of Lord Cranworth in the *Bartonshill*

Case, 3 Macq. 294, and of Lord Chelmsford, *ibid.* at p. 311.

(*o*) Per Bowen, L. J., in *Thomas v. Quartermaine*, *ubi supra*, at p. 696.

(*p*) Per Lord Herschell in *Smith v. Baker*, *ubi supra*, at p. 360.

(*q*) (1872), 41 L. J. Ex. 99. This case is also reported in L. R. 7 Ex. 130, where the passage quoted appears in a different form.

ance of it knowing the duty and knowing the danger, I think he would be *volens*, but not otherwise.

It is very difficult to extract any principle from *Clarke v. Holmes* (r), though Bowen, L. J., in *Thomas v. Quartermaine* (s), refers to it as a decision turning upon the statutory right to protection. The decision in *Baddeley v. Earl Granville* (t) is unsatisfactory. It purports to follow *Thomas v. Quartermaine* (s); but that case is no authority for the proposition "that the defence arising from the maxim *volenti non fit injuria* was not applicable in cases where the injury arose from the breach of a statutory duty on the part of the employer" (u), or for the statement that "in *Thomas v. Quartermaine* (s) both the Lord Justices thought that the maxim would not apply at all where the injury arose from a direct breach by the defendant of a statutory obligation" (r). What *Thomas v. Quartermaine* (s) does say is this: that the existence of a statutory duty is one of those "concurrent facts which justify the inquiry whether the risk, though known, was really encountered voluntarily" (y); in other words, in such cases a heavier burden of proof is laid on the defendant. There is no support in any other authority for the absolute proposition laid down in *Baddeley v. Earl Granville* (t). The true ground for this decision, it is submitted, is that stated by Wills, J., at the end of his judgment, viz., that it had not been shown that the plaintiff knew both of the duty and the danger (z).

Summing up the authorities on this point it may be said that the following circumstances may be proved:—

- (a) ignorance on the workman's part of the dangers or risks of the employment;
- (b) knowledge by the workman of the danger, but a duty on the part of the employer to provide against such danger, and failure on his part to do so;
- (c) knowledge by the workman, but promise by the employer to remove or lessen the danger or risk;
- (d) knowledge of the danger and risks and consent by the workman to accept such risks;

(r) (1862), 7 H. & N. 937. See p. 297, *supra*.

(s) 18 Q. B. D. at p. 696; and see per Fry, L. J., *ibid.* at p. 703.

(t) (1887), 19 Q. B. D. 423.

(u) See the head-note in *Baddeley v. Earl Granville*.

(x) Per Wills, J., *ibid.* at p. 426.

(y) Per Bowen, L. J., 18 Q. B. D. 685, 696.

(z) As to the argument based on public policy, cf. *Griffiths v. Earl of Dudley* (1882), 9 Q. B. D. 357. See *Caswell v. North* (1856), 5 E. & B. 849. (Breach of statutory duty to fence machinery.)

(e) knowledge and consent as in the last case, but consent on the faith of a promise by employer to remove or lessen such dangers or risks, and default of employer in performing his promise;

only in case (d) will the defence *volenti non fit injuria* be available.

If a servant be guilty of culpable negligence which has contributed to his injury, he cannot recover, even though the master has been guilty of negligence; and this principle applies indifferently whether the defendant's negligence consist in the breach of a Common Law or a statutory duty (a). Thus in *Senior v. Ward* (b) the defendant, though guilty of gross negligence, was not liable because the plaintiff, who had been injured by the breaking of a rope used for lowering the cage down the shaft of the pit, knew that the rope was not regularly tested, and because he had disregarded a warning given by the banksman that he had better examine the rope before he went down.

But mere negligence on the part of the plaintiff does not excuse the defendant; it must be negligence which, in spite of ordinary care and diligence on the part of the defendant, causes the injury to the plaintiff (c).

Some of the authorities seem to draw no distinction between the negligence of a child and that of an adult. For example, when a boy of sixteen was injured owing to an explosion, and there was evidence that the defendant's manager had allowed the plaintiff to do that which it was not his duty to do, and which it was dangerous for an inexperienced hand to do, the Court refused to hold the defendant liable (d). So in *Singleton v. Eastern Rail. Co.* (e), the defendants were not liable for injury sustained by a child of three and a half years, who had strayed upon their line—though in this case it was not clear that the defendants were to blame. In *Mangan v. Atterton* (f) no action lay at the instance of a child who was injured by putting his fingers between the cogwheels of a

(a) *Caswell v. Worth* (1856), 5 E. & B. 849.

(b) (1859), 1 E. & E. 385.

(c) *Radley v. London and North Western Rail. Co.* (1876), 1 A. C. 754, 759, per Lord Penzance.

(d) *Murphy v. Smith* (1865), 12 L. T. (N. S.) 605. In *Willetts v. Buffalo Rail. Co.*, 14 Barb. 558, it was held that a lunatic might be guilty of contributory negligence; *Waite v. North Eastern Rail. Co.* (1858), E. B. & E. 719; 5 Jur. (N. S.) 936, is cited as authority for the

proposition that a child cannot recover, if the person, in whose charge he is, is guilty of contributory negligence; but *quære*, does not this case turn on the terms of the particular contract? See the discussion in Beven's *Negligence in Law* (2nd ed.), p. 202.

(e) (1859), 7 C. B. (N. S.) 287; *Abbott v. Macfie* (1863), 2 H. & C. 744; *Wardleworth v. Walker* (1873), 37 J. P. 52.

(f) (1866), L. R. 1 Ex. 239. See criticisms on this case in *Clark v. Chambers* (1878), 3 Q. B. D. 327. Compare *Campbell v. Ord* (1873), 1 R. 149.

crushing machine, while another child turned the handle—though in this case also it was not clear that the defendant was guilty of any negligence.

It is difficult, however, to believe that a master would not be liable if young persons were allowed to work in and about machinery, the dangers of which he did and they did not understand (*g*); and the tendency has been to draw a distinction in this respect between adults and younger persons (*h*). But it is a distinction only of degree, not of principle. For instance, the duty to give warning and instruction in case of a dangerous process may be delegated by the master, alike in the case of an adult and an infant; and in the event of neglect on the foreman's part to warn or instruct the infant, the defence of "common employment" is open to the master (*hh*).

Contributory negligence is a defence under the Employers' Liability Act, 1880 (*i*); but not to a claim under the Workmen's Compensation Act, 1906, save in cases where it amounts to "serious and wilful misconduct" (*k*).

A fuller discussion of this question belongs rather to a treatise on Negligence (*l*).

(*g*) *Lynch v. Nordin* (1841), 1 Q. B. 29, where the question whether a child could be guilty of contributory negligence was decided to be a question of fact for the jury. (Defendant left his horse and cart in street unattended; plaintiff, a child of seven years of age, got upon cart in play, and another child led the horse; plaintiff injured; defendant liable though plaintiff a trespasser, and had contributed to mischief.) See remarks in *Lygo v. Newbold* (1854), 9 Ex. 302. In *Mann v. Ward* (1892), 8 Times L. R. 699, Esher, M. R., said that *Lynch v. Nordin* "has always been doubted." But see *Harrold v. Watney*, [1898] 2 Q. B. 320.

(*h*) *Crocker v. Banks* (1888), 4 Times L. R. 324 (C. A.); *Jenson v. Gatti*

(1886), 2 Times L. R. 441; *Harrold v. Watney*, [1898] 2 Q. B. 320. And see *Bailey v. Neal* (1888), 5 Times L. R. 20; *Fenna v. Clare*, [1895] 1 Q. B. 199. See Beven's *Negligence in Law* (2nd ed.), pp. 182—192.

(*hh*) *Cribb v. Kynoch*, [1907] 2 K. B. 548; *Young v. Hoffmann*, *ibid.* 646.

(*i*) *Wehlin v. Ballard* (1886), 17 Q. B. D. 122.

(*k*) Sect. 1, sub-sect. (2) (c).

(*l*) As to the onus of proof in this defence, see *Davey v. London and South-Western Rail. Co.* (1883), 12 Q. B. D. 70; *Wakelin v. London and South-Western Rail. Co.* (1886), 12 A. C. 41; *Smith v. South Eastern Rail. Co.*, [1896] 1 Q. B. 178.

APPENDIX A.

Origin of doctrine of Common Employment.

THE decision in *Priestley v. Fowler* (1837), 3 M. & W. 1, is obscure. It was on a motion to arrest judgment, and it is uncertain whether the negligence was in overloading a van or in not providing a proper van. The duty of the defendants as alleged in the declaration was "to use due and proper care that the said van should be in a proper state of repair, that it should not be overloaded, and that the plaintiff should be safely carried thereby." The judgment can scarcely be said to lay down any clear rule of law. It contains loose expressions and analogies, which are not strictly accurate. It seems to show that the difference between the obligations of one who employs a contractor and a master who employs a servant was not present to the Court. "Lord Abinger," says Lord Justice Brett, in his evidence before the Select Committee on Employer's Liability, "who had been one of the greatest advocates ever known at the Bar, had an advocate's talent, which mainly consists in the invention of analogies, and there never was a more perfect master of that art than Lord Abinger, and he took it with him to the Bench; and I think it may be suggested that the law, as to the non-liability of masters with regard to fellow-servants, arose principally from the ingenuity of Lord Abinger in suggesting analogies in the case of *Priestley v. Fowler*, where the Court stated the law thus: 'Where several persons are employed in the conduct of one common enterprise or undertaking, and the safety of each depends much on the care and skill with which each other shall perform his appropriate duty, each is an observer of the conduct of others, and can give notice of any misconduct, incapacity, or neglect of duty, and leave the service if the common employer will not take such precautions and employ such agents as the safety of the whole party may require. By these means the safety of each will be made more effectually secured than could be done by a resort to the common employer for an indemnity in case of loss by the negligence of each other.'" The doctrine was clearly laid down in America, in 1812, in *Farwell v. Boston and Worcester Cor.*, 4 Met. 49. The first English case in which it is distinctly stated was *Hutchinson v. York, Newcastle and Berwick Rail. Co.*, 5 Ex. 343, decided in May, 1850.

The doctrine has never been applied except to acts of negligence, and the like. It is clear that it has no application to risks which are not incidental to the service (see *Mansfield v. Baddeley*, 34 L. T. 696): and to render it applicable there must be a common master; *Johnson v. Lindsay*, [1891] A. C. 371.

APPENDIX B.

The following are the chief cases as to Common Employment :

FELLOW-SERVANTS.

Hutchinson v. York and Newcastle Rail. Co. (1850), 5 Ex. 353. (Servant of defendants and engine-driver of train in which he was riding in discharge of his duty.) (See pp. 280, 281.)

Wignmore v. Jay (1850), 5 Ex. 343. (See p. 280.)

Wiggitt v. Fox (1856), Ex. 832. (See p. 284.)

Degg v. Midland Rail. Co. (1857), 1 H. & N. 773. (See p. 289.)

Senior v. Ward (1859), 1 E. & E. 385. (Pitman and banksman of a colliery.) (See p. 304.)

Scarle v. Lindsay (1861), 11 C. B. N. S. 429. (See p. 281.)

Potter v. Faulkner (1861), 1 B. & S. 800. (See p. 290.)

Waller v. South-Eastern Rail. Co. (1863), 32 L. J. Ex. 205. (Railway-gang and ganger of platelayers.)

Gallagher v. Piper (1864), 16 C. B. N. S. 669. (See p. 280.)

Lovegrove v. London, Brighton and South Coast Rail. Co. (1864), 16 C. B. N. S. 669. (Plaintiff, a labourer, in the service of defendants, employed in filling trucks with ballast; injured by the negligence of another servant in insecurely placing temporary rails.)

Morgan v. Vale of Neath Rail. Co. (1864), L. R. 1 Q. B. 149. (See pp. 281, 283.)

Hall v. Johnson (1865), 3 H. & C. 589. (See p. 283.)

Murphy v. Smith (1865), 12 L. T. (N. S.) 605. (Plaintiff, a boy of tender years, and a person who managed the works in the absence of the manager.)

Feltham v. England (1866), L. R. 2 Q. B. 33. (Plaintiff, a workman, in the employment of maker of locomotive engines, and foreman of the workshop, his superior, fellow-servants; plaintiff injured by the giving way of piers supporting a tramway and travelling-crane; defendant not liable, there being no evidence of personal negligence.)

Tinney v. Midland Rail. Co. (1866), L. R. 1 C. P. 291. (See p. 283.)

Murray v. Currie (1870), L. R. 6 C. P. 24. (See p. 285.)

Howells v. Landore Siemens Steel Co. (1874), L. R. 10 Q. B. 62. (See p. 283.)

Lovell v. Howell (1876), L. R. 1 C. P. D. 161. (Plaintiff, a licensed waterman and lighterman employed by defendant, a warehouse-keeper, at weekly wages, to moor and unmoor barges; he was in the habit of passing through the warehouse on the way to manager's office to receive orders or when sent for; being sent for, he was on his way to the office, and he was knocked down by a sack of grain through the negligence of defendant's servants in hoisting goods.)

Rourke v. White Moss Co. (1876), L. R. 1 C. P. D. 556; 2 C. P. D. 205. (See p. 286.)

Conway v. Belfast Rail. Co. (1877), 11 Ir. C. L. 345. (General traffic manager and milesman. Exchequer Chamber affirming decision of Common Pleas.)

Charles v. Taylor (1878), L. R. 3 C. P. D. 492. (Plaintiff, hired by A. to assist in unloading a barge at the wharf of defendants, who were brewers. Plaintiff and A., with other men, formed a gang, which was paid by defendants at 1s. 9d. a ton; the money to be paid to one of the men and distributed among the others. Defendants alone might dismiss plaintiff. A servant of the defendants engaged in moving barrels negligently let one of them slip, and plaintiff was injured. A. held to be a foreman and not a contractor, and plaintiff and A. fellow-servants.)

Hedley v. Pinkney, [1894] A. C. 222. (See p. 281.)

Burr v. Theatre Royal, Drury Lane, [1907] 1 K. B. 544. (See p. 281.)

NOT FELLOW-SERVANTS.

Vose v. Lancashire and Yorkshire Rail. Co. (1858), 2 H. & N. 728. (Plaintiff, representative of deceased, who was in service of East Lancashire Railway Company, and, while at work in a station in the joint occupation of that company and the defendant company, was killed by an engine belonging to the latter, which was being shunted. The persons employed in shunting joint servants of the two companies, but the engine-driver and the persons employed in the same way as the deceased were separate servants. The accident occasioned by defects in the rules of the station.)

Abraham v. Reynolds (1860), 5 H. & N. 143. (See p. 287.)

Fletcher v. Pefo (1862), 3 F. & F. 368. (Plaintiff engaged by wharfinger to land bags of guano and carry them to warehouse to be piled there by day-labourers; plaintiff injured by the fall of some of the bags, which had been negligently piled. The jury held that the plaintiff was engaged in separate work from that of defendant's men.)

Cleveland v. Spier (1864), 16 C. B. N. S. 399. (A mere passer-by was asked by a workman to give information as to mode of making a hole in a gas-pipe; not a volunteer assistant, within *Degg v. Midland Rail. Co.*)

Warburton v. Great Western Rail. Co. (1866), L. R. 2 Ex. 30. (Plaintiff, a porter in the service of the London and North-Western Railway Company, at their Manchester station, which was used by the defendants' company, injured by the negligence of an engine-driver in the service of the defendants' company; the defendants' servants, when within the station, were subject to the rules of the London and North-Western Railway Company. Defendants liable.)

Smith v. Steele (1875), 44 L. J. Q. B. 60. (Pilot engaged by defendants under the compulsory clause of Merchant Shipping Act, 1854, and ship-owner's servants.)

Turner v. Great Eastern Rail. Co. (1875), 33 L. T. 431.

Wright v. London and North-Western Rail. Co. (1876), L. R. 10 Q. B. 298; L. R. 1 Q. B. D. 252. (See p. 290.)

Swainson v. North-Eastern Rail. Co. (1878), L. R. 3 Ex. D. 341. (See p. 288.)

Johnson v. Lindsay, [1891] A. C. 371. (See p. 288.)

Cameron v. Nyström, [1893] A. C. 308. (Shipmaster's servant and a servant of stevedores who were unloading the ship.)

Union Steamship Co. v. Claridge, [1894] A. C. 185. (Stevedores' servant, and one of crew not under stevedores' control.)

The Petrel, [1893] P. 320. (Masters and crews of two different ships belonging to same owners.)

Tozeland v. West Ham Union, [1906] 1 K. B. 538. (Pauper in workhouse and guardians' engineer.)

The following are some of the chief decisions relative to the duty of masters in regard to premises, machinery and plant :—

MASTER NOT LIABLE.

Seymour v. Maddox (1851), 16 Q. B. 326. (See p. 280, n. (t).)

Skipp v. Eastern Counties Rail. Co. (1853), 9 Ex. 223. (Plaintiff employed to attach carriages to locomotive; defendants did not employ a sufficient number of men; but plaintiff had worked several months without any complaint.)

Dymen v. Leach (1857), 26 L. J. Ex. 221. (Defendant, from motives of economy, substituted for the usual and safest mode of lifting sugar-moulds a clip. The deceased, a labourer in the employment of defendant, fastened the clip, which slipped, so that a mould fell, and killed the deceased. No case to go to the jury; the labourer having known all the circumstances, and having voluntarily used the machinery.)

Ormond v. Holland (1858), E. B. & E. 102. (Defendants were builders, and plaintiff in their employment as bricklayer; plaintiff injured by the breaking of a round in a ladder. "There being no evidence of personal negligence, either by interference in the working or in hiring the servants, or in choosing the implements." Defendants not liable.)

Alsop v. Yates (1858), 27 L. J. Ex. D. 156. (Defendants set up a hoarding which projected too far into the street; a heavy machine was put between the hoarding and building; a ladder upon which plaintiff was, near it; plaintiff had complained of the position, and the defendant had said that it was dangerous and would be altered. A cart ran against the hoarding, and the machine fell upon the plaintiff, and knocked him down. Defendant not liable because, *inter alia*, the plaintiff continued working with full knowledge.)

Griffiths v. Gidlow (1858), 3 H. & N. 648. (See p. 299.)

Senior v. Ward (1859), 1 E. & E. 385. (See p. 304.)

Riley v. Barendse (1861), 6 H. & N. 445. (Declaration by administratrix that J. R. was servant of the defendants on the terms that they would take due and ordinary care not to expose the said J. R. to extraordinary risk and danger in the course of his employment; yet the defendant did not take due and ordinary care not to expose, &c. No such contract could be implied from ordinary contract of service.) See *Potts v. Port Carlisle Rail. Co.*, 2 L. T. (N. S.) 282.

Ogden v. Rummens (1863), 3 F. & F. 751. (Workmen employed in shoring up arch, and injured by its falling in; defendants, not having knowledge or reasonable means of knowledge of the danger, not liable.) See also *Tarrant v. Webb* (1856), 5 L. J. C. P. 51.

Brown v. Accrington Cotton Co. (1865), 3 H. & C. 511. (Defendants erected a mill by contracts made with different persons; appointed clerk of works to superintend building; plaintiff, employed by clerk of works, injured by fall of floor. Defendants not liable, there being no evidence of personal negligence on the part of defendants or personal interference.)

Sarton v. Hawkesworth (1872), 26 L. T. (N. S.) 851. (See p. 292.)

Allen v. The New Gas Co. (1876), L. R. 1 Ex. D. 251. (See p. 298, n. (t).)

Griffiths v. London and St. Katharine Docks (1884), 13 Q. B. D. 249. (See p. 295.)

LIABLE.

Roberts v. Smith (1857), 2 H. & N. 213. (Plaintiff, a bricklayer, in the employment of defendants, injured by the fall of a scaffold; the materials for the scaffold were defective; one of the labourers engaged in constructing the scaffold having tried the logs, one of the defendants said, "They will do very well; don't break any more." A new trial, on the ground of evidence of personal interference and negligence by master.) See also *Webb v. Rennie* (1865), 4 F. & F. 608. (See p. 295.)

Williams v. Clough (1858), 3 H. & N. 258. (Defendant ordered plaintiff to use a ladder, which he knew to be unsound; plaintiff injured; defendant liable.)

Caswell v. Worth (1856), 5 E. & B. 849. (See p. 303, n. (c).)

Dool v. Sheppard (1856), 5 E. & B. 856. (See p. 473.)

Murphy v. Phillips (1876), 35 L. T. (N. S.) 477. (See p. 295.)

Holmes v. Worthington (1861), 3 F. & F. 333. (See p. 300, n. (f).)

Davis v. England (1864), 33 L. J. Q. B. 321. (See p. 296, n. (b).)

Holmes v. Clarke (1862), 31 L. J. Ex. 356. (See p. 297.)

Watling v. Gaskell (1871), L. R. 6 Ex. 73. (Declaration by plaintiff as administratrix of G. W. for that it was necessary for G. W. in the course of his employment to get into a certain machine which was constructed defectively and in an unsafe manner, as the defendants well knew. While G. W. was so employed the machine was suddenly put in motion, and G. W. injured. Not necessary to aver that G. W. was ignorant of the defective state of machine.)

Britton v. Great Western Cotton Co. (1872), L. R. 7 Ex. 130. (See p. 302.)

Williams v. Birmingham Battery and Metal Co., [1899] 2 Q. B. 338. (See p. 296.)

Part II.

STATUTE LAW.

CHAPTER I.

SUNDAY OBSERVANCE.

THE 29 Charles II. c. 7 (1677) (an Act for the better observation of the Lord's Day, commonly called Sunday), is the only statute on this subject to which it is necessary to refer. Section 1 declares :—

That no tradesman, artificer, workman, labourer, or other person whatsoever, shall do or exercise any worldly labour, business, or work of their ordinary callings upon the Lord's Day, or any part thereof (works of necessity and charity only excepted); and that every person being of the age of fourteen years or upwards offending in the premises, shall for every such offence forfeit the sum of five shillings; and that no person or persons whatsoever shall publicly cry, show forth, or expose to sale any wares, merchandises, fruits, herbs, goods or chattels whatsoever upon the Lord's Day, or any part thereof, upon pain that every person so offending shall forfeit the same goods so cried or showed forth or exposed to sale.

The penalties under this Act are rarely applied (*a*). But it is occasionally necessary to know whether contracts made on Sunday are illegal. The Courts have attached important limitations to the scope of the statute. The words "other person whatsoever" have not been read literally. Thus in *Sandiman v. Breach* (*b*), it was held that they did not include the owner and driver of a stage-coach, on the principle of construction, that where general

(*a*) See 34 & 35 Vict. c. 87, since continued by "Expiring Laws Continuance Acts," restricting proceedings under 29 Chas. II. c. 7. The "consent in writing of the chief officer of police" to a prosecution under 29 Car. II. c. 7, required by sect. 1 of the Act of 1871 must be given before the information is laid: *Thorpe v. Priestnall*, [1897] 1 Q. B. 159.

(*b*) (1827), 7 B. & C. 96. (The Act does not include contracts to carry passengers by coach on a Sunday; consequently action lies against owner of stage-coach for refusing to take plaintiff as a passenger on Sunday.) See, on the other hand, *Ex parte Middleton* (1824), 3 B. & C. 164, where a driver of a *van* was held to be under 3 Car. I. c. 4.

words follow particular words they are to be read as applicable to persons or things *ejusdem generis*. A barber, who shaves customers on Sunday, is not within the Act (*c*). When an attempt was made to bring within the Act farmers who employ labourers on a Sunday, the Court of Queen's Bench (*d*) decided that a farmer who employed labourers to cart hay, although he himself worked, was not liable to the penalties of the Act. The strange result follows, that an agricultural labourer who works on Sunday may be punished, while the farmer who employed him, and who perhaps took part in the work, cannot be punished.

The Courts have also limited the application of the statute to cases in which contracts are made "in the course of the ordinary calling." This was the construction adopted in *Drury v. Defontaine* (*e*). There the question was, whether a sale of a horse on a Sunday, not in the course of the ordinary calling of the vendor, was void so as to disable him from recovering the price. The Court decided that it was not void. Though questioned by Park, J., in *Smith v. Sparrow* (*f*), this construction of the statute is now settled. Accordingly, a contract of hiring for a year made between a farmer and a labourer is not affected by the statute, hiring not being, it was said, one of those things which the ordinary duties of a farmer require him to perform (*g*). Such also was the view of the Court of Exchequer with respect to an agreement by an attorney, whereby he agreed to become personally liable in respect of a debt owing by a client (*h*). On the other hand, a horsedealer cannot maintain an action upon a contract, even if made privately, for the sale and warranty of a horse, provided it were entered into on a Sunday (*i*).

(*c*) *Palmer v. Snow*, [1900] 1 Q. B. 725.

(*d*) *R. v. Silvester* (1864), 33 L. J. M. C. 79; "other persons then must mean other persons not quite a tradesman, labourer, &c.," Blackburn, J.

(*e*) (1808), 1 Taunt. 131. See also *Triggs v. Lester* (1866), L. R. 1 Q. B. 259.

(*f*) (1827), 4 Bing. 84 (action will not lie upon a contract made and completed on a Sunday).

(*g*) *Rex v. Whitnash* (1827), 7 B. & C. 596.

(*h*) *Peate v. Dieken* (1834), 1 C. M. & R. 422; *Norton v. Powell* (1842), 4 M. & G. 42 (the giving by one tradesman to another tradesman of a guarantee for the faithful services of a traveller is not an act done in his ordinary calling).

(*i*) *Fennell v. Ridler* (1826), 5 B. & C. 406. See also as to "ordinary calling," *Walton v. Garin* (1850), 16 Q. B. 48 (enlistment of a soldier by a recruiting officer not within the Act, and not invalid by reason of taking place on a Sunday); *Searle v. Morgan* (1838), 4 M. & W. 270 (sending a mare to a farmer to be covered by a stallion not within farmer's ordinary calling); *Blossome v. Williams* (1824), 3 B. & C. 232 (A. not knowing that B. was a horse-dealer, made a verbal bargain with him on a Sunday for purchase of a horse; assuming the contract to be void, the purchaser was ignorant of the fact that the vendor was exercising his ordinary calling on the Sunday; the former was therefore entitled to recover the price for breach of warranty).

Only one penalty can be incurred in the course of a day (*k*).

In some American cases it has been held that if a master forces a servant to labour on a Sunday it is a good cause for leaving the service (*l*). This would appear to be the case here also. In a Scotch case (*m*), the House of Lords laid it down that an apprentice to a barber, who was bound not to absent himself from his master's business on holidays or weekdays, late hours or early, without leave, and who went away on Sundays without leave, and without shaving his master's customers, could not be lawfully required to attend his master's shop on Sundays; the ground of the decision was that shaving was not a work of necessity or mercy; and the words of the Scotch statute are wider (*n*).

The Bread Acts of 1822 (*o*) and 1836 (*p*) forbid the baking and restrict within certain hours the sale of bread, &c. on Sunday.

(*k*) *Crepps v. Darden* (1770, 2 Cowp. 640.

(*l*) *Coin v. St. Germon Brown*, Penn. 24; and *Warner v. Smith*, 8 Con. 14.

(*m*) *Phillips v. Innes* (1837), 4 C. & F. 234. See, however, *Wilson v. Simson* (Sc., 11 July, 1844, where the Court of Session held that a farmer was justified in dismissing without notice a farm labourer, who, when requested by the farmer to remain at home to attend the cattle, which were ill, in order that the

other servants might go to church, refused so to do. For a review of the English and American cases, see Benjamin on *Sale*, 5th ed. 546—550. See also Factory and Workshop Act, 1901, ss. 34, 48.

(*n*) See per Chamell, J., in *Pulmer v. Snow*, *ubi sup.*, note (*c*).

(*o*) Sect. 16 applies to radius of ten miles from Exchange.

(*p*) Sect. 14 applies outside ten miles from Exchange.

CHAPTER II.

THE EMBEZZLEMENT ACTS.

IN consequence of defects in the Common Law with respect to larceny or embezzlement by servants, the Legislature passed, especially before the introduction of the factory system, a number of Acts for the purpose of preventing the embezzlement of materials and tools, and the selling and buying of such embezzled materials, &c. Most of these Acts have been repealed. The more important of the surviving provisions are here set out.

22 GEO. II. c. 27 (1749).

An Act for the more effectual preventing of frauds and abuses committed by persons employed in the manufacture of hats, and in the woollen, linnen, fustian, cotton, iron, leather, furr, hemp, flax, mohair and silk manufactures; and for preventing unlawful combinations of journeymen dyers, and journeymen hotpressers, and of all persons employed in the said several manufactures, and for the better payment of their wages (a).

Persons employed in the manufactures described being convicted of embezzling, &c. any of the materials, or of reeling false or short yarn,

Section 1 recites clauses in Geo. II. c. 8; and proceeds to extend and amend the same by enacting that "if any person or persons whatsoever, who shall be hired or employed to make any felt or hat, or to prepare or work up any woollen, linnen, fustian, cotton, iron, leather, furr, hemp, flax, mohair, or silk manufactures, or any manufactures made up of wooll, furr, hemp, flax, cotton, mohair, or silk, or of any of the said materials mixed one with another, shall from and after the twenty-fourth day of June, one thousand seven hundred and forty-nine, purloin, imbezil, secrete, sell, pawn, exchange, or otherwise unlawfully dispose of any of the materials with which he, she, or they shall be respectively intrusted, whether the same or any part thereof be or be not first wrought, made up, manufactured, or converted into merchantable wares, or shall reel false or short yarn (*b*), and shall be thereof lawfully convicted, by the oath or (if the owner thereof be of the people called Quakers) solemn affirmation of the owner of such goods or materials,

(*a*) By 6 & 7 Vict. c. 40, so much of the above Act as relates to the woollen, linen, cotton, flax, mohair, and silk manufactures is repealed. Repealed and replaced as to penalties by 17 Geo. III. c. 56, s. 16. So far as it

deals with the payment of wages in coin, this Act is repealed by 1 & 2 Will. IV. c. 36.

(*b*) Repealed as to reeling short yarn by 14 Geo. III. c. 44.

or by the oath or affirmation of any other credible witness or witnesses, or by the confession of the person or persons charged with such offence, before any one or more (e) justice or justices of the peace of the county, riding, division, city, liberty, town or place where such offence shall be committed, or where the person or persons so charged shall reside or inhabit (which oath or affirmation the said justice or justices is and are hereby empowered and required to administer), it shall and may be lawful to and for the said justice or justices, by warrant under his or their hand and seal or hands and seals, to commit the person or persons so convicted to the House of Correction, or to be committed. other public prison of such county, riding, division, city, liberty, town or place (d). . . .

Section 2. "That if any person or persons shall buy, receive, accept, or take, by way of gift, pawn, pledge, sale, or exchange, or in any other manner whatsoever, of or from any person or persons hired or employed to make any felt or hat, or to prepare or work up the woollen, linen, fustian, cotton, iron, leather, furr, hemp, flax, mohair, or silk manufactures, or any manufactures made up of wooll, furr, hemp, flax, cotton, mohair, or silk, or of any of the said materials mixed one with another, any thrums or ends of yarn, or any other materials of wooll, furr, hemp, flax, cotton or iron, or any leather, mohair, or silk, whether the same or any part thereof be or be not first wrought, made up, or manufactured, knowing the person or persons of whom he, she, or they so buy, receive, accept or take the said materials, to be so hired or employed as aforesaid, and not having first obtained the consent of the person or persons so hiring or employing him, her, or them, who shall offer to sell, pawn, pledge, exchange, or otherwise dispose of the said materials, or shall buy, receive, accept, or take, in any manner whatsoever, of or from any other person or persons whomsoever, any of the said materials, whether the same be or be not first wrought, made up, or manufactured, knowing the same to be so purloined or imbezzled," &c.

Such person being convicted shall forfeit a sum of twenty pounds (e) for the first offence (d). . . .

Section 7. "That if any person or persons entrusted with any of the materials hereinbefore mentioned, in order to prepare, work up or manufacture the same, shall not use all such materials in the preparing, working up, or manufacturing of the same, and shall neglect or delay, for the space of twenty-one days (f) after such materials shall be prepared, worked up, or manufactured, to return (if required by the owner or owners of such materials so to do) so much of the said materials as shall not be used as aforesaid to the person or persons entrusting him, her, or them therewith, such neglect or delay shall be deemed and adjudged to be an imbezzling or purloining of such materials; and the person or persons so neglecting or delaying, being thereof convicted, in manner before prescribed for the conviction of offenders against this Act, shall suffer the like punishment as

Persons convicted of buying or receiving materials from workmen,

to forfeit for the first offence 20/.

Penalty on workmen not returning the remains of the materials in eight days.

(e) 17 Geo. III. c. 56, s. 2, substitutes "two or more."

(d) The rest of this section, relating to punishment, is repealed by 47 & 48 Vict. c. 43, s. 4.

(e) By sect. 3 of 17 Geo. III. c. 56, "the penalty for the first offence shall

be any sum not more than forty pounds, nor less than twenty pounds." But see 38 & 39 Vict. c. 86, s. 8, which gives justices power to reduce penalties.

(f) 17 Geo. III. c. 56, s. 7, substituted eight days. See also 9 Geo. IV. c. 31, s. 1.

persons convicted of imbezzling or purloining any of the materials herein-before mentioned, are by this Act rendered subject and liable to."

Section 12 recites 12 Geo. I. c. 34, and enacts that, "all the provisions, regulations, pains, penalties, and forfeitures therein contained, shall, from and after the said twenty-fourth day of June, one thousand seven hundred and forty-nine, extend, and be construed, deemed, and adjudged to extend, to journeymen dyers, journeymen hot pressers, and all other persons whatsoever employed in or about any of the woollen manufactures of this kingdom, and also to journeymen, servants, workmen, and labourers, and all other persons whatsoever employed in the making of felts or hats, or in or about any of the manufactures of silk, mohair, furr, hemp, flax, linen, cotton, fustian, iron or leather, or in or about any of the manufactures made up of wooll, furr, hemp, flax, cotton, mohair or silk, or of any of the said materials mixed one with another, in as full and ample manner as the said provisions, regulations, pains, penalties, and forfeitures are by the said last mentioned Act declared to extend to the several and respective persons therein named" (g).

17 GEO. III. c. 56 (1777).

An Act for amending and rendering more effectual the several laws now in being, for the more effectual preventing of frauds and abuses by persons employed in the manufacture of hats, and in the woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, and silk manufactures; and also for making provisions to prevent frauds by journeymen dyers (h).

Section 3 recites section 2 of 22 Geo. II. c. 27, and substitutes a penalty of not more than forty pounds, nor less than twenty pounds.

Persons
pawning, &c.
any such
materials as
aforesaid,
liable to same
punishment,
&c.

Section 5. "If any person shall sell, pawn, pledge, exchange or otherwise unlawfully dispose of, or offer to sell, pawn, pledge, exchange, or otherwise unlawfully dispose of, any such materials as aforesaid, whether wrought or unwrought, mixed or unmixed, knowing them to have been purloined or embezzled, every such person lawfully convicted shall be liable to the same punishment as he or she would be liable to by virtue of this Act, on being convicted of receiving purloined or embezzled materials, knowing them to have been purloined or embezzled."

How justices
to proceed,
&c.

Section 6. "When any person or persons shall be brought or charged upon oath before any two or more justices of the peace, by virtue of this Act, with being suspected of, or with having purloined or embezzled, or with having received any such materials as aforesaid, whether the same be wrought or unwrought, mixed or unmixed, knowing the same to have been

(g) But see 6 Geo. IV. c. 129, s. 2, and 9 Geo. IV. c. 31, s. 1.

(h) This Act may be cited as "The Frauds by Workmen Act, 1777": vid. Short Titles Act, 1896. By 6 & 7 Viet. c. 40, s. 1, it is repealed as to woollen,

linen, cotton, flax, mohair and silk manufactures. See also 6 Geo. IV. c. 129; 1 & 2 Will. IV. c. 36; 34 & 35 Viet. c. 116; and 38 & 39 Viet. c. 86, s. 17.

either purloined or embezzled, or received from some person or persons not entitled to dispose thereof, and it shall be made appear upon the oath or (being of the people called Quakers) upon the affirmation of one or more credible witness or witnesses, to the satisfaction of such justices, that such person or persons hath or have purloined or embezzled, or hath or have received any such materials as aforesaid, knowing the same to have been purloined or embezzled, or received from some person or persons not entitled to dispose thereof, it shall and may be lawful for such justices, or for the justices at their general or general quarter sessions of the peace, and they are hereby respectively authorized and empowered (if they shall think fit) to convict such person or persons of having purloined or embezzled, or of having received such materials as aforesaid, knowing the same to have been purloined or embezzled, or received from some person or persons not entitled to dispose thereof, although no proof shall be given to whom such materials belong; and the person or persons so convicted shall for every such offence, be subject to such and the like penalties and punishments, at the discretion of such justices respectively, as persons convicted of buying or receiving any such materials as aforesaid, knowing the same to have been purloined or embezzled, are by this Act subject and liable to" (*l*).

[Section 8 *repealed by* 38 & 39 *Vict. c. 86.*]

Section 9. "If any person shall receive any of the aforesaid materials in a fictitious name, in order to be manufactured; or if any person shall receive in his or her own name any of the said materials, in order to be manufactured by himself or herself, and afterwards deliver the same, or any part thereof, to any other person to be manufactured (without the consent of the owner thereof); or if any carrier or other person employed to deliver any such materials to any workman, to be prepared or wrought up, shall designedly deliver the same to any other person than the person to whom such material were ordered or intended to be delivered by the owner thereof; all and every person and persons offending in any of the cases aforesaid shall for every such offence, be liable to prosecution, in the same manner, and to the same punishment (*k*) as is by this Act directed in respect to persons taking in any of the said material in order to work up, and afterwards wilfully neglecting or refusing the performance of their work for the space of time aforesaid."

If any person receive materials in fictitious name, or deliver same to any other person, &c. he shall be liable, &c.

Section 10. "It shall and may be lawful for any two justices of the peace of any county, riding, division, city, liberty, town, or place, upon complaint made to them, upon oath by any one credible person, or (being of the people called Quakers) upon solemn affirmation, that there is cause to suspect that any such purloined or embezzled materials, whether mixed or unmixed, wrought or unwrought, are concealed in any dwelling-house, outhouse, yard, garden, or other place or places (*l*), by virtue of a warrant under their hands and seals, to cause every such dwelling-house, outhouse, yard, garden,

Justices may grant a warrant for searching.

(i) See 22 Geo. II. c. 27, s. 7. As to power to reduce penalties, 38 & 39 Vict. c. 86, s. 8, and the Summary Jurisdiction Act, 1879, s. 4.

(k) See as to reduction of penalties, 42 & 43 Vict. c. 49, s. 4.

(l) A warehouse occupied only for business purposes and not within the curtilage of a dwelling-house, is within the Act: *Queen v. Edmundson* (1859), 2 E. & E. 77.

or place to be searched in the daytime: and if any such (*m*) materials suspected to be purloined or embezzled shall be found therein, to cause the same, and the person or persons in whose house, outhouse, yard, garden, or other place the same shall be found, to be brought before any two justices of the peace for the same county, riding, division, city, liberty, town, or place; and if the said person or persons shall not give an account to the satisfaction of such justices (*n*), how he, she, or they came by the same, then the said person or persons so offending shall be deemed and adjudged guilty of a misdemeanor, and shall be punished in manner hereinafter mentioned, although no proof shall be given to whom such materials belong."

Peace officers in towns corporate, &c., may apprehend all persons suspected, &c.

Section 11. "That every peace officer, constable, headborough, or tything-man, in every county, city, town corporate, or other place, where there shall be officers, and every beadle within his ward, parish, or district, and every watchman, during such time only as he is on his duty, shall and may apprehend or cause to be apprehended, all and every person or persons who may reasonably be suspected of having or carrying, or anyways conveying, at any time after sunseting, and before sunrise, any of such materials suspected to be purloined or embezzled, and the same, together with such person or persons, as soon as conveniently may be, convey or carry before any two justices of the peace for the county, riding, division, city, liberty, town or place within which the suspected person or persons shall be apprehended; and if the person or persons so apprehended in conveying any such materials shall not produce the party or parties duly entitled to dispose thereof, from whom he, she, or they bought or received the same, or some other credible witness to testify upon oath or (being of the people called Quakers) upon solemn affirmation, to the sale or delivery of the said materials (which oath or affirmation respectively such justices are hereby empowered to administer), or shall not give an account, to the satisfaction of such justices, how he, she, or they came by the same; then the said person or persons so apprehended shall be deemed and adjudged guilty of a misdemeanor, and be punished in manner hereinafter mentioned, although no proof shall be given to whom such materials belong."

Owners may enter to inspect their materials.

Section 15. "It shall be lawful for the owner or owners of any such materials, from time to time, as occasion shall require, to demand entrance, and enter, at all reasonable hours in the daytime, into the shops or outhouses of any person or persons employed by him or them to work up any of the said materials, or other place or places where the work shall be carried on, and there to inspect the state and condition of such materials; and in case of refusal, by any such person or persons so employed, to permit such entrance or inspection, he, she, or they so refusing, shall forfeit and pay such sum of money, not exceeding forty shillings, nor less than ten shillings, as the

(*m*) "'Such' does not appear to be applied to the circumstances; but to the nature of the article." "The offence aimed at is the possession of goods, suspected to be purloined, without being able to give a satisfactory account of them"; and it does not matter that the materials were not found concealed in dwelling-house, out-

house, &c., or in the execution of a search warrant. *Queen v. Wilcock*, (1845), 7 Q. B. 317; *Davis v. Nest* (1833), 6 C. & P. 167.

(*n*) The conviction need not allege the defendant's knowledge of the goods having been purloined: *In re Boothroyd* (1846), 15 M. & W. 1.

justices, before whom he, she, or they shall be convicted shall think proper, to be recovered and applied in the same manner as is by this Act directed for the misdemeanor of being in the possession of any such materials, without being able to account satisfactorily for such possession."

Section 16 mentions 22 Geo. II. c. 27, and enacts that: "Every penalty or punishment directed by or other provision contained in the said recited Act, in respect to the said materials, so far as the said recited Act is not varied by this Act, and all the provisions in this Act contained in respect to the said materials, shall extend and be applicable to any tool or tools, and implement or implements, with which any person or persons shall be entrusted for making, working up, or manufacturing, the said materials, and also to any drug or drugs, ingredient or ingredients, with which any person or persons shall be intrusted, for the purpose of dyeing, preparing, or manufacturing such of the aforesaid materials as are usually dyed, prepared, or manufactured, in the same manner as if the said tools and implements, drugs and ingredients, were particularly mentioned both in the said recited Act and in the preceding provisions of this Act."

Penalties
applicable to
the tools, &c.

Section 17. "If any person, hired, retained, or employed as a journeyman dyer, or as a servant or apprentice, in the dyeing of any felt or hat, or any woollen, linen, fustian, cotton, leather, fur, flax, mohair, or silk materials, whether the same shall be wrought or unwrought, or shall be mixed or unmixed with other of the said materials, shall, without the consent of the master, person or persons by whom such journeyman, servant, or apprentice shall be hired, retained, or employed, wilfully dye any of the said materials, whether wrought or unwrought, or mixed or unmixed with other of the said materials, or without such consent shall wilfully receive any such materials as aforesaid, for the purpose of dyeing the same, whether the same shall be dyed or prepared for dyeing, he or she so guilty of either of the said offences shall, for the first offence, forfeit the sum of ten shillings, and for the second offence, the sum of twenty shillings; and for every subsequent offence, the sum of forty shillings; or if any person shall procure any such materials as aforesaid, to be dyed by any person so hired, retained, or employed as a journeyman, servant or apprentice, without the consent of his or her master or employer, or shall offer any such materials to any such journeyman, servant, or apprentice, for the purpose aforesaid, he or she so offending, being thereof lawfully convicted, by the oath or (being of the people called Quakers) affirmation of one or more credible witness or witnesses, before two or more justices of the peace for the county, riding, division, city, liberty, town, or place, where the offence shall be committed, shall, for the first offence, forfeit the sum of five shillings; and for the second offence, the sum of twenty shillings; and for every subsequent offence, the sum of four pounds," &c.

If journey-
man dyer, &c.
shall, without
consent of
his employer,
dye any
woollen, &c.

6 & 7 VICT. c. 40 (1813).

An Act to amend the laws for the prevention of frauds and abuses by persons employed in the woollen, worsted, linen, cotton, flax, mohair, and silk hosiery manufactures; and for the further securing the property of the manufacturers and the wages of the workmen engaged therein (o).

So much of the said Acts as relates to the woollen, linen, cotton, flax, mohair, and silk manufactures, repealed.

Section 1 recites 8 & 9 Wm. III. c. 36; 1 Anne, St. 2 c. 18; 9 Anne, c. 32; 12 Geo. I. c. 34; 13 Geo. II. c. 8; 22 Geo. II. c. 27; 17 Geo. III. c. 56; 32 Geo. III. c. 44 (repealed), and enacts, "that from and after the commencement of this Act, so much of the said recited Acts or any of them as relates to the woollen, linen, cotton, flax, mohair, and silk manufactures, or any of them, or any manufactures whatsoever made of wool, cotton, flax, mohair, or silk materials, whether the same be or be not mixed with each other or with any other materials, shall, so far as respects the manufactures, trades, occupations, and employments hereinafter mentioned, be, and the same are hereby repealed, save and except so far as the same may have repealed any former Acts or enactments."

Persons convicted of pawning or embezzling any of the materials herein particularized to forfeit the value of the same, with penalty and costs.

Section 2. "That if any person whosoever entrusted with any woollen, worsted, linen, cotton, flax, mohair, or silk materials for the purpose of being prepared, worked up, or manufactured, either by himself or by any person or persons to be employed by or under him, or by himself jointly with any person or persons to be employed with, by, or under him, or for any purpose or work connected with manufacture or incidental thereto, or any parts, branches, or processes thereof, or any tools or apparatus for manufacturing the said materials, shall sell, pawn, purloin, embezzle, secrete, exchange, or otherwise fraudulently dispose of the same materials, tools, or apparatus, or any part thereof, he shall, upon being thereof lawfully convicted by the oath of the owner of such materials, tools, or apparatus, or any part thereof, or of any other credible witness or witnesses, before two or more justices of the peace, forfeit the full value of the same, and also forfeit such penalty not exceeding ten pounds, together with costs, as to the said justices shall seem meet," &c. (p).

Persons neglecting to return materials within a prescribed time to be subject to the same punishment as for embezzlement.

Section 3. "That if any person whosoever intrusted with any woollen, worsted, linen, cotton, flax, mohair, or silk materials, for the purpose of being prepared, worked up, or manufactured, either by himself or by any person or persons to be employed by or under him, or by himself jointly with any person or persons to be employed with, by, or under him, or for any purpose of work connected with manufacture or incidental thereto, or any parts, branches, or processes thereof, or with any tools or apparatus for manufacturing the said materials, shall neglect or delay to return the said materials, tools, or apparatus, or any part thereof, for the space of fourteen clear days after being required so to do by the party entrusting him therewith, or by some person on his behalf, by notice in writing to be served upon or left at the last or usual place of abode or business of such person (unless pre-

(o) Short title, "The Hosiery Act, 1843" (59 & 60 Vict. c. 14).

(p) Provisions as to proceedings in

default of payment altered by Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), s. 4.

vented by some reasonable and sufficient cause, to be allowed by the justices before whom he shall be brought), then and in every such case all or so much or so many of the said materials, tools, or apparatus as shall not be returned to the person so entrusting him therewith within the time aforesaid, shall be deemed to be embezzled by the person so neglecting or delaying to return the same; and the person so neglecting or delaying to return the same shall for every such offence be liable to be proceeded against for embezzlement, in the same manner, and subject to the same forfeiture and penalty, with costs, and to be applied in the same manner, as are respectively hereinbefore prescribed and imposed in respect to persons selling, pawning, purloining, embezzling, secreting, exchanging, or otherwise fraudulently disposing of the said materials."

Section 4. "Any person who shall purchase or take in pawn, or who in any other way shall receive into his premises or possession, any woollen, worsted, linen, cotton, flax, mohair, or silk materials, and whether the same or any part of the said materials be or be not wholly or partially wrought, made up, or manufactured into merchantable wares, or any tools or apparatus for manufacturing the same, knowing that such materials, tools, or apparatus are purloined or embezzled or fraudulently disposed of, or that the person from whom he shall purchase, take in pawn, or receive the same, is fraudulently or unlawfully disposing thereof, or knowing such person to be employed or entrusted by any other person or persons to work up either by himself or by or with others the materials so purchased, taken in pawn, or received for any other person or persons, and not having first obtained the consent of the person or persons so employing or entrusting him therewith, shall, on conviction by the oath of the owner or of any other credible witness or witnesses, be deemed and adjudged guilty of a misdemeanor, and be punished in manner hereinafter mentioned."

Persons knowingly purchasing or receiving embezzled materials or tools guilty of a misdemeanor, punishable as after mentioned.

Section 5. "That if any person shall sell, pawn, pledge, exchange, or otherwise unlawfully dispose of, or offer to sell, pawn, pledge, exchange, or otherwise dispose of any such materials, tools, or apparatus as aforesaid, knowing the same to have been so purloined or embezzled or received from persons fraudulently disposing thereof as aforesaid, he shall, on conviction by the oath of the owner of such materials, tools, or apparatus, or any part thereof, or of any other credible witness or witnesses, be deemed and adjudged guilty of a misdemeanor, and be punished in manner hereinafter mentioned."

Persons knowingly selling, &c. embezzled materials or tools guilty of a misdemeanor, punishable as after mentioned.

[Section 7 repealed by 38 & 39 Vict. c. 86, s. 17.]

Section 8. "That upon proof on oath before a justice of the peace that there is reasonable cause to suspect that any person has in his possession or on his premises any such materials, tools, or apparatus as aforesaid which have been purloined, embezzled, or otherwise fraudulently disposed of, it shall be lawful for the said justice and such justice is hereby required to grant his warrant to search the dwelling-house and premises of such person, and if any such property shall be found therein, to cause such materials, tools, or apparatus, and the person in whose possession or on whose premises the same shall be found, to be brought before him or some other justice of the peace, to be dealt with in the same manner as any person brought before a justice under the enactment next hereinafter contained."

Justice empowered to grant search warrants.

Section 9. "Peace officers to apprehend suspected persons. Persons apprehended, and not proving that the property is honestly come by, to be punishable," &c.

Disposal of
unclaimed
property
which has
been seized.

Section 12. "That where no proof shall be given at the time of conviction of the ownership of property found in the possession of a person convicted under this Act, the justices or Court shall cause the property so found to be deposited in some safe place for any time not exceeding thirty days, and shall, if the property be of sufficient value to pay the expenses thereof, order an advertisement to be inserted in one or more of the public newspapers of the town or city where, or nearest the place where, the same was found, and by fixing a notice on some public place describing such property, and where the same may be inspected, or in case of the said property not being of sufficient value to pay the said expenses, then by fixing such notice as aforesaid only; and in case any person shall prove his own or his employer's ownership of property therein upon oath to the satisfaction of a justice, restitution of such property shall be ordered to the owner thereof, after paying the reasonable cost of removing, depositing, advertising, and giving notice of the same; but if no ownership be proved to such property the justice shall, at the termination of thirty days, order such property to be sold, and after deducting the charges aforesaid with the charges of sale, shall order the residue to be applied in the same manner as is hereafter directed for the disposal of any other penalty under this Act."

Owner of
materials may
inspect shops,
&c. of persons
employed.

Section 13. "That it shall be lawful for the owner of any such materials as aforesaid, or any other person duly authorised by him, or other the person who shall have so entrusted such materials, from time to time, as occasion shall require, to demand leave of entrance and enter at all reasonable hours in the daytime into the shops or outhouses of any person employed to work up or manufacture, either by himself or by any other person under him, any of the said materials, or other place or places where the work shall be carried on, and there to inspect the state and condition of such materials; and in case of refusal or neglect by any such person or persons so employed to permit such entrance or inspection, such person shall, for so refusing to permit such entrance or inspection, forfeit any sum not exceeding twenty shillings, as the justices before whom he shall appear or be brought shall think proper, to be applied in the same manner as is hereinafter directed for the disposal of any other penalty under this Act: provided always, that nothing herein contained shall authorise any such owner or other person as aforesaid to inspect any frame, tools, or apparatus wherewith such materials are worked up, in case such frame, tools, or apparatus comprise any new invention or improvement not disclosed to the public."

Penalty for
refusal.

Proviso.

Section 14. "Warrant may be granted by justice on complaint on oath that person is about to abscond," &c.

Receiving
goods in
fictitious
name.

Section 15. "If any person shall receive any of the aforesaid materials in a fictitious name, in order to be manufactured, every such person so offending, and being convicted thereof on the oath of one or more credible witness or witnesses before two or more justices, shall for every such offence be liable to the same punishment as is hereinbefore directed in respect to persons not fulfilling their engagements."

Section 16. "Justice to issue warrant to constable to take possession of property entrusted to any person committed for embezzlement," &c.

[Section 17 *repealed by* 38 & 39 *Vict. c. 86, s. 17.*]

Section 18. "No frame, loom, or machine, materials, tools, or apparatus which shall be entrusted for the purpose of being used or worked in any of the said manufactures, or any work connected therewith or incidental thereto, or any parts, branches, or processes thereof, whether such frame, loom, or machine, materials, tools, or apparatus, shall or shall not be rented or taken by the hire, shall at any time or times hereafter be distrained or seized, or be liable to be distrained or seized, for rent or for debt, or under any execution or other proceedings whatever, unless the rent be due or the money be owing by the owner of the said frame, loom, or machine, or of the said materials or tools or apparatus aforesaid, or of any part thereof respectively."

Frames, &c. not belonging to workmen not liable to be seized for rent or debt owing by workmen.

Section 19. "In case of refusal to restore frames, &c., unlawfully seized, justice may order their restoration," &c.

Section 20. "That if any person or persons shall obliterate, efface, or alter the owner's name or initials, or other distinguishing mark, on any loom, machine, or any bar or part thereof, or the moulds thereof, without the order or authority of the owner thereof, he shall, on conviction thereof before two justices of the peace, forfeit any such sum not exceeding two pounds as such two justices shall order and direct, to be applied in the first place, in paying the costs of the proceedings before such justices, and the surplus, if any, to the party injured; and in default of payment of such forfeiture immediately on conviction, or within such period as the justices so convicting shall direct, then the said justices may, either immediately or at any time after such conviction, commit any person so convicted to the common gaol or house of correction, there to be imprisoned, with or without hard labour, as to the said justices shall seem meet."

Penalty for obliterating mark on machine.

Section 21. "And for the discouragement of frivolous and vexatious informations and prosecutions under this Act, be it enacted, that it shall be lawful for any justices or Court of petty sessions before whom any case under this Act is tried to award costs to the defendant, with an allowance for his loss of time, in case of acquittal, to be paid by the prosecutor; and also, if it shall appear to such justices or court that the charge was made from a malicious, vexatious, or frivolous motive, or in case the party shall be charged with embezzlement of materials, by reason of any deficiency in the weight of the materials which he shall have returned to the person by whom they were entrusted to such party, as compared with the weight of the materials received, and it shall be proved upon the hearing of the case that such materials were knowingly and fraudulently delivered to the party charged whilst in a damp state, so that the apparent weight thereof was thereby increased, it shall be lawful for such justices or court to award to the defendant such further sum of money not exceeding twenty pounds as to such justices or court shall seem fit, to be paid by such prosecutor as a compensation for the injury done; and in default of payment such costs and allowances and compensations may be levied by distress and sale of the prosecutor's goods."

Power to award costs to defendant.

Sections 22 & 23 and other provisions as to procedure were repealed by the Summary Jurisdiction Act, 1884, which, by section 6, substitutes the procedure under the provisions of the Summary Jurisdiction Acts for that prescribed in the repealed enactment.

24 & 25 VICT. c. 96 (1861).

An Act to consolidate and amend the statute law of England and Ireland relating to larceny and other similar offences.

As to Larceny from Mines.

Ore of metal,
coal, &c.

Section 38. "Whosoever shall steal, or sever with intent to steal, the ore of any metal, or any lapis calaminaris, manganese or mundiek, or any wad, black cawke, or black lead, or any coal or cannel coal, from any mine, bed, or vein thereof respectively, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour" (g).

Miners re-
moving ore
with intent to
defraud.

Section 39. "Whosoever being employed in or about any mine, shall take, remove, or conceal any ore of any metal, or any lapis calaminaris, manganese, mundiek or other mineral found or being in such mine, with intent to defraud any proprietor of or any adventurer in such mine, or any workman or miner employed therein, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour."

As to Larceny in Manufactories.

Stealing
goods in pro-
cess of manu-
facture.

Section 62. "Whosoever shall steal to the value of ten shillings, any woollen, linen, hempen, or cotton yarn, or any goods or article of silk, woollen, linen, cotton, alpaca, or mohair, or of any one or more of those materials mixed with each other, or mixed with any other material, whilst laid, placed, or exposed, during any stage, process, or progress of manufacture(r) in any building, field, or other place, shall be guilty of felony, and being convicted thereof shall be liable to be kept in penal servitude for any term not exceeding fourteen years."

As to Larceny or Embezzlement by Clerks, Servants, or Persons, in the Public Service.

Larceny by
clerks or
servants.

Section 67. "Whosoever, being a clerk or servant(s), or being employed for the purpose or in the capacity of a clerk or servant, shall steal any chattel, money, or valuable security belonging to or in the possession or power of his master or employer shall be guilty of felony, and being con-

(g) *Rex v. Webb* (1835), 1 Moore, C. C. 431. See 39 & 40 Geo. III. c. 77, s. 4.

(r) *R. v. Woodhead* (1836), 1 M. & R. 549.

(s) See Part I., at p. 10, *supra*.

victed thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years, or to be imprisoned, and, if a male under the age of sixteen years, with or without whipping."

Section 68. "Whosoever, being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, shall fraudulently embezzle any chattel, money or valuable security, which shall be delivered to or received or taken in possession by him for or in the name or on the account of his master or employer, or any part thereof, shall be deemed to have feloniously stolen the same from his master or employer, although such chattel, money, or security was not received into the possession of such master or employer otherwise than by the actual possession of his clerk, servant, or other person so employed, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years, or to be imprisoned, and, if a male under the age of sixteen years, with or without whipping."

Embezzle-
ment by clerks
or servants.

24 & 25 VICT. c. 97 (1861).

An Act to consolidate and amend the statute law of England and Ireland relating to malicious injuries to property.

Section 14. "Whosoever shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any goods or article of silk, woollen, linen, cotton, hair, mohair or alpaca, or of any one or more of those materials mixed with each other or mixed with any other material, or any framework knitted piece, stocking, hose or lace, being in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process or progress of manufacture, or shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any warp or shute of silk, woollen, linen, cotton, hair, mohair, or alpaca, or of any one or more of those materials mixed with each other or mixed with any other material, or shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or render useless, any loom, frame, machine, engine, rack, tackle, tool or implement, whether fixed or moveable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles, or shall by force enter into any house, shop, building, or place, with intent to commit any of the offences in this section mentioned, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or to be imprisoned, and, if a male under the age of sixteen years, with or without whipping."

Destroying
goods in pro-
cess of manu-
facture,
certain ma-
chinery, &c.

Section 15. "Whosoever shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy (t) or to render useless, any

Destroying
machines in

(t) *R. v. Fisher* (1865), L. R. 1 C. C. R. 7.

other manu-
factures,
threshing
machines, &c.

machine or engine, whether fixed or moveable, used or intended to be used for sowing, reaping, mowing, threshing, ploughing or draining, or for performing any other agricultural operation, or any machine or engine, or any tool or implement, whether fixed or moveable, prepared for or employed in any manufacture whatsoever, (except the manufacture of silk, woollen, linen, cotton, hair, mohair or alpaca goods, or goods of any one or more of those materials mixed with each other or mixed with any other material, or any framework knitted piece, stocking, hose or lace), shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years, or to be imprisoned, and, if a male under the age of sixteen years, with or without whipping."

26 & 27 VICT. c. 103 (1863).

An Act to amend the law in certain cases of misappropriation by servants of the property of their masters.

"Whereas the offence of taking corn or other food by a servant from the possession of his master, contrary to his orders, for the purpose of giving the same or of having the same given to the horses or other animals of such master, is by law a felony (*n*): And whereas it is desirable to alter the law in this respect:" Be it enacted as follows:—

Servants
taking their
master's corn,
&c. without
authority, for
the purpose of
giving the
same to their
master's
horses, &c.
not guilty of
felony, but
shall be liable
to imprison-
ment, &c.

Power to
justice to dis-
miss case if
deemed too
trifling.

1. If any servant shall, contrary to the orders of his master, take from his possession any corn, pulse, roots, or other food, for the purpose of giving the same or of having the same given to any horse or other animal belonging to or in possession of his master, the servant so offending shall not by reason thereof be deemed guilty of or be proceeded against for felony, but shall, on conviction of such offence before two justices of the peace, at their discretion, either be imprisoned with or without hard labour, for any term not exceeding three months, or else shall forfeit and pay such penalty as shall appear to them to be meet, not exceeding the sum of five pounds, and if such penalty shall not be paid, either immediately after the conviction, or within such period as the said justices shall at the time of the conviction appoint, the servant so offending shall be imprisoned, with or without hard labour (*x*); provided always, that if upon the hearing of the charge the said justices shall be of opinion that the same is too trifling, or that there are circumstances in the case which render it inexpedient to inflict any punishment, they shall have power to dismiss the charge, without proceeding to a conviction: provided also, that if upon the trial of any servant for feloniously taking from his master any corn, pulse, roots, or other food consumable by horses or other animals, such servant shall allege that he took the same under such circumstances as would constitute an offence punishable under

(*n*) This Act was passed in consequence of the decision in *R. v. Privett* (1846), 1 Den. C. C. 193.

(*x*) For scale of imprisonment on non-payment of penalties, see 42 & 43 Vict. c. 49, s. 5.

this Act, and thereof shall satisfy the jury charged with his trial, then it shall be lawful for such jury to return a verdict accordingly ; and thereupon the Court before which such trial shall take place shall proceed to award such punishment against such servant as may be awarded by two justices of the peace on the conviction of any person under the provisions of this Act : provided also, that in case of non-payment of any penalty to be imposed by the Court on such servant, he shall be imprisoned, with or without hard labour, for any term not exceeding three months, as the Court shall order, unless such penalty shall be sooner paid.

Section 2 enacts power to appeal against conviction (*y*).

Section 3 enacts that no certiorari shall lie.

Section 4 enacts that summary proceedings may be taken under 11 & 12 Vict. c. 43, except in London and the Metropolitan police district.

Section 5 enacts that the Act shall extend to England only.

(*y*) The procedure is that provided by the Summary Jurisdiction Acts : see 47 & 48 Vict. c. 43, s. 6.

CHAPTER III.

SERVANTS' CHARACTERS.

32 GEO. III. c. 56 (1792).

An Act for preventing the counterfeiting of certificates of the characters of servants (a).

Preamble.

WHEREAS many false and counterfeit characters of servants have either been given personally, or in writing, by evil disposed persons being, or pretending to be, the master, mistress, retainer or superintendent of such servants, or by persons who have actually retained such servants in their respective service, contrary to truth and justice, and to the peace and security of his Majesty's subjects: And whereas the evil herein complained of is not only difficult to be guarded against, but is also of great magnitude, and continually increasing, and no sufficient remedy has hitherto been applied: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the first day of July, one thousand seven hundred and ninety-two, if any person or persons shall falsely personate any master or mistress, or the executor, administrator, wife, relation, housekeeper, steward, agent, or servant of any such master or mistress, and shall, either personally or in writing, give any false, forged or counterfeited character to any person offering him or herself to be hired as a servant into the service of any person or persons, then, and in such case, every such person or persons so offending shall forfeit and undergo the penalty or punishment hereinafter mentioned and in that behalf provided.

Any person personating a master, &c. or giving a false character to a servant,

or asserting that a servant has been hired for a period of time or in a station;

2. And from and after the said first day of July, one thousand seven hundred and ninety-two, if any person or persons shall knowingly and wilfully pretend, or falsely assert in writing, that any servant has been hired or retained for any period of time whatsoever, or in any station or capacity whatsoever, other than that for which or in which he, she, or they shall have hired or retained such servant in his, her, or their service or employment, or for the service of any other person or persons, that then, and in either of the said cases, such person or persons so offending as aforesaid shall forfeit and undergo the penalty or punishment hereinafter mentioned and in that behalf provided.

(a) See as to servants' characters, Part I., Chapter XIV.

3. And from and after the said first day of July one thousand seven hundred and ninety-two, if any person or persons shall knowingly and wilfully pretend or falsely assert in writing, that any servant was discharged or left his, her, or their service at any other time than that at which he or she was discharged or actually left such service, or that any such servant had not been hired or employed in any previous service, contrary to truth, that then, and in either of the said cases, such person or persons shall forfeit and undergo the penalty or punishment hereinafter mentioned and in that behalf provided.

or was discharged at any other time, or had not been hired in any previous service, contrary to the fact ;

4. And from and after the said first day of July one thousand seven hundred and ninety-two, if any person shall offer himself or herself as a servant, asserting or pretending that he or she hath served in any service in which such servant shall not actually have served, or with a false, forged, or counterfeit certificate of his or her character, or shall in anywise add to or alter, efface, or erase any word, date, matter, or thing contained in or referred to in any certificate given to him or her by his or her last or former actual master or mistress, or by any other person or persons duly authorised by such master or mistress to give the same, that then, and in either of the said cases, such person or persons shall forfeit and undergo the penalty or punishment hereinafter mentioned and in that behalf provided.

or any person offering himself as a servant pretending to have served where he has not served, or with a false certificate or who shall alter any certificate ;

5. And from and after the said first day of July one thousand seven hundred and ninety-two, if any person or persons, having before been in service, shall, when offering to hire himself, herself, or themselves as a servant or servants in any service whatsoever, falsely and wilfully pretend not to have been hired or retained in any previous service as a servant, that then and in such case such person or persons shall forfeit and undergo the penalty or punishment hereinafter mentioned and in that behalf provided.

or who, having been before in service, shall pretend not to have been in such service ;

6. And from and after the said first day of July one thousand seven hundred and ninety-two, if any person or persons shall be convicted of any or either of the offence or offences aforesaid, by his, her, or their confession, or by the oath of one or more credible witness or witnesses, before two or more justices of the peace for the county, riding, division, city, liberty, town, or place, where the offence or offences shall have been committed (which oath such justices are hereby empowered and required to administer), every such offender or offenders shall forfeit the sum of twenty pounds, one moiety whereof shall be paid to the person or persons on whose information the party or parties offending shall have been convicted, and the other moiety thereof shall go and be applied for the use of the poor of the parish wherein the offence shall have been committed ; and if the party who shall have been so convicted shall not immediately pay the said sum of twenty pounds so forfeited, together with the costs and charges attending such conviction, or shall not give notice of appeal, and enter into recognizance in the manner hereinafter mentioned and in that behalf provided, such justices shall and may commit every such offender to the house of correction or some other prison of the county, riding, division, city, liberty, town, or place, in which he or she shall have been convicted, there to remain and be kept to hard labour.

shall on conviction forfeit 20*l*.

Application of forfeiture.

Persons not paying the penalty with costs, or not giving notice of appeal, &c., may be committed.

Offenders
discovering
accomplices
before infor-
mation,
indemnified.

8. Provided always that if any servant or servants, who shall have been guilty of any of the offences aforesaid, shall, before any information has been given or lodged against him, her, or them, for such offence, discover and inform against any person or persons concerned with him, her, or them, in any offence against this Act, so as such offender or offenders be convicted of such offence in manner aforesaid, every such servant or servants so discovering and informing, shall thereupon be discharged and indemnified of, from, and against all penalties and punishments to which, at the time of such information given, he, she, or they might be liable by this Act, for or by reason of such his, her, or their own offence or offences.

9. [*Form of conviction, see 11 & 12 Vict. c. 43, s. 17, and the Summary Jurisdiction Rules, 1886.*]

Parties ag-
grieved may
appeal to the
quarter
sessions.
Proce-
dings
not to be
quashed for
want of form,
or removed
by certiorari.

10. Provided always, that if any person shall think himself or herself aggrieved by anything done in pursuance of this Act, such person may appeal to the justices of the peace at the next general or quarter sessions of the peace (*h*), and no conviction or order made concerning any matters aforesaid, or any other proceedings to be had, touching the conviction or convictions of any offender or offenders against this Act, shall be quashed for want of form, or be removed by certiorari or any other writ or process whatsoever into any of his Majesty's courts of record at Westminster.

(*h*) Appeal procedure is regulated by Act, 1879. See sect. 6 of the Summary Jurisdiction Act, 1884.

CHAPTER IV.

THE TRUCK ACTS.

ENACTMENTS intended to stop frauds and abuses arising out of the practice of paying workmen and labourers in goods of a poor quality, or of making unreasonable and excessive deductions from wages, are very ancient. As long ago as 1464 Parliament interfered (4 Edw. IV. c. 1, repealed by 1 & 2 Will. III. c. 36) with a view to protect labourers against being compelled to take a great part of their wages in “pins, girdles, and other unprofitable wares.” Parliament declared that masters “shall pay to the carders, spinners, and all such other labourers, in any part of the said trade, lawful money for all their lawful wages, and payments of the same.”

In 1565 the 8 Eliz. c. 7, s. 6 was passed for the benefit of the “sheermen, frizers, and cottoners” of Shrewsbury, to prohibit payment in wares. The 1 Anne, c. 18 (made perpetual by 9 Anne, c. 30; see also 10 Anne, c. 16, s. 6) was also passed in order to prevent “the oppression of the labourers and workmen employed in the woollen, linen, fustian, cotton, and iron manufacture.” It declared that payments should be by lawful coin, and not by cloth, victuals, or commodities. As the manufactures of England extended, the evils of the truck system spread; and the Legislature interfered from time to time, now in one trade and now in another, with a view to ensure payment of wages in cash.

Acts dealing with this subject were passed in 1714 (1 Geo. I. s. 2, c. 15), in 1725 (12 Geo. I. c. 34, ss. 3, 4 and 8), in 1740 (13 Geo. II. c. 8, s. 6), in 1756 (29 Geo. II. c. 33), in 1779 (19 Geo. III. c. 49), in 1817 (57 Geo. III. c. 115, and c. 122), and 1818 (58 Geo. III. c. 51).

The former Acts on the subject were repealed by 1 & 2 Will. IV. c. 36.

The existing statutes known as the Truck Acts are—the Truck Act, 1831 (1 & 2 Will. IV. c. 37), the Truck Amendment Act, 1887 (50 & 51 Vict. c. 46), the Truck Act, 1896 (59 & 60 Vict.

e. 44), and the Hosiery Manufacture (Wages) Act, 1874 (37 & 38 Vict. c. 48).

The last-named Act was passed in consequence of the recommendations of a Royal Commission appointed in 1871, and of certain decisions such as *Chawner v. Cummins* (1845), 8 Q. B. 311; and *Archer v. James* (1862), 31 L. J. Q. B. 153. It abolished frame-rents, and made illegal any contracts between master and workman for the payment thereof.

The chief object of the Truck Act, 1896, was to create further safeguards for the workmen who contracted for deductions or payments in respect of fines (sect. 1), damaged goods (sect. 2), materials and tools (sect. 3), by providing that the employer who infringed its provisions is guilty of an offence under the principal Act (sect. 4), and is liable to a suit for the recovery of the sums so paid or deducted (sect. 5).

In the Coal and Metalliferous Mines Regulation Acts are similar provisions. Section 116 of the Factory and Workshop Act, 1901 (1 Edw. VII. c. 22), which requires particulars of wages to be furnished, is a further extension of the principle of the Truck Acts. All of these statutes were passed to prevent abuses in regard to the payment of wages.

The following are the chief provisions in the existing Truck Acts:—

- (1) In contracts of hiring, the entire wages are to be paid in coin (sect. 3, Act of 1831);
- (2) Any contract providing for the payment of wages otherwise than in current coin, is illegal, null, and void (sect. 1, Act of 1831);
- (3) A payment made by delivery of goods or otherwise is null and void (sect. 3, Act of 1831). It is also a misdemeanour (sect. 9, *ibid.*);
- (4) No deduction or set-off for goods supplied is legal (i) by an employer, or by any shop in which he is interested (Act of 1831, s. 5); or (ii) under any order or direction given by himself or his agent (Act of 1887, s. 5);
- (5) Contracts as to the place where or the manner in which wages are to be expended are illegal, null, and void (sect. 2 of Act of 1831, and sect. 6 of Act of 1887);
- (6) Persons to whom the Acts apply.

The Act of 1831 was confined to certain specified trades (sect. 19); but by sect. 2 of the Act of 1887, the two Acts, which

are to be read together (sect. 1), were extended to “any workman defined in the Employer and Workman Act, 1875, s. 10 ” (*a*).

By sect. 10 of the Act of 1887, when articles are made by a person at his own home or otherwise without the employment of any person under him, the Acts apply to him as if he were a workman.

(7) The chief exemptions from the Acts are :—

A.—Under the Act of 1831, s. 23 :

- | | |
|--|---|
| 1. Medicine and medical attendance ; | } Deductions in respect thereof not to exceed their true value. |
| 2. Materials and tools to miners ; | |
| 3. Fuel ; | |
| 4. Provender for beasts used in business ; | |
| 5. Rent. | |

Deductions from wages for the foregoing things, or for advances in respect thereof, must be by contract in writing signed by the workman.

B.—1. Advances of contributions to benefit societies for sick relief, or for education of children (1831, s. 24).

2. Deductions for sharpening tools under special agreement (Act of 1887, s. 8).

Deductions for education, medicine and tools to be audited (1887, s. 9)

C.—Act of 1896.

1. Deductions for fines (sect. 1) (*b*) ; damaged goods (sect. 2), or materials and tools (sect. 3), to be made under public notice, or written contract signed by the workman, and must be reasonable in amount.

2. Deductions made not in accordance with the Act may be recovered (sect. 5).

(8) No interest is to be charged on advances of wages (Act of 1887, s. 3).

(9) Remedies :—

The workman may recover wages not paid in coin (Act of 1831, s. 4). A set-off is not allowed in respect of goods supplied contrary to the provisions of the Act (sect. 5) ; and contracts or payments made illegal are punishable as misdemeanours (sect. 9).

(*a*) See notes on that section at p. 617, *infra*.

(*b*) Shop assistants are included in this provision.

- (10) Penalties are imposed upon employers for entering into contracts, or making payments or deductions declared illegal by the Acts [1831, s. 9; 1887, s. 11; 1896, s. 4]; and their agents (Act of 1887, s. 11). (And see Act of 1831, ss. 9, 10, 13, 14, 17; Act of 1887, ss. 12, 13, 14, 15) (c). The Acts of 1831, 1887 and 1896 are to be construed together as one Act (Act of 1896, s. 12).

1 & 2 WILL. IV. c. 37.

[15th October, 1831.]

An Act to prohibit the payment, in certain trades, of wages in goods, or otherwise than in the current coin of the realm.

Contracts for the hiring of artificers must be made in the current coin of the realm;

Whereas it is necessary to prohibit the payment, in certain trades, of wages in goods, or otherwise than in the current coin of the realm; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in all contracts hereafter to be made for the hiring of any artificer (*d*), or for the performance by any artificer of any labour in any of the said trades, the wages of such artificer shall be made payable in the current coin of this realm only, and not otherwise; and that if in any such contract the whole or any part of such wages shall be made payable in any manner other than in the current coin aforesaid, such contract shall be and is hereby declared illegal, null, and void.

The following cases may be consulted on the question of the meaning of "wages": *Chauncer v. Cummins* (1815), 8 Q. B. 311; *Archer v. James* (1862), 31 L. J. Q. B. 153 (*c*); *Smith v. Walton* (1877), 3 C. P. D. 109; *Albutt v. Taylor* (1887) (nure-

(c) The procedure for the recovery of penalties is now regulated by the Summary Jurisdiction Acts: *vide* sect. 5 of the Summary Jurisdiction Act, 1881.

(d) The words "in any of the trades hereinafter enumerated" were repealed by the Truck Act, 1887, and the Statute Law Revision Act, 1891. The repeal of words by those Acts will not be noted. See as to the present application of the Act and the definition of the word "artificer," the Truck Act, 1887, s. 2.

(e) "Whatever is contracted to be paid for personal labour is wages, and what is more than that is not wages. The price of 7*d.* per dozen in the case before the Court is not merely wages so defined, but wages plus an addition for the work done by the stocking-frame" (per Byles, J., in *Archer v. James*, *l. c.* at p. 161). Bramwell, B.'s, view was as follows (*ibid.* p. 166): "Pure wages are the price of labour alone, simply labour. As soon as a tool is used, capital is used, and if the tools are the labourer's he is a

capitalist, and part of what he receives is capital. . . . I do not say that what the man with his flail receives, nor what the carpenter with his tools receives, nor what the working hosiery who finds the frames and machines, fire, light, &c. receives, are not properly wages, and wages within the meaning of the Truck Acts. They are: the labour is the principal thing. . . . There is a case where the machine or tool is so the principal ingredient that the payment is principally on account of it, and therefore, when the machine or tool is of appreciable value part of the payment is in respect of it."

"From the carpenter's gross income we must deduct the expenses which he incurs for tools; and when estimating the earnings of quarrymen in any district, we must find out whether local custom assigns the expenses of tools and blasting powder to them or to their employers": Marshall's *Political Economy* (2nd ed.), p. 683.

ported; printed at p. 45 of the memorandum on the Truck Acts, Bluebook—1896—C—8048); *Hughes v. Bonella* (1894), 10 Times L. R. 197. Some of these decisions are noticed in the notes on sect. 23, *infra*. Here it is enough to say that “wages” means strictly the remuneration of labour, and does not include the instruments or means of enabling the labourer to perform his work. But see sect. 10 of the Truck Amendment Act, 1887.

2. If in any contract hereafter to be made between any artificer and his employer, any provision shall be made directly or indirectly respecting the place where, or the manner in which, or the person or persons with whom, the whole or any part of the wages due or to become due to any such artificer shall be laid out or expended, such contract shall be and is hereby declared illegal, null, and void (*f*).

and must not contain any stipulations as to the manner in which the wages shall be expended.

3. The entire amount of the wages earned by or payable to any artificer in respect of any labour by him done, shall be actually paid to such artificer in the current coin of this realm, and not otherwise; and every payment made to any such artificer by his employer, of or in respect of any such wages, by the delivery to him of goods or otherwise than in the current coin aforesaid, except as hereinafter mentioned, shall be and is hereby declared illegal, null, and void (*g*).

All wages must be paid in coin.

Payment in goods illegal.

Having regard to the terms of this section, an employer may not deduct from the wages money which a court of summary jurisdiction has ordered the workman to pay to the employer in respect of breaches of contract to work: *Williams v. North's Navigation Collieries*, [1906] A. C. 136.

4. Every artificer shall be entitled to recover from his employer, in the manner by law provided for the recovery of servants' wages, or by any other lawful ways and means, the whole or so much of the wages earned by such artificer as shall not have been actually paid to him by such his employer in the current coin of this realm.

Artificers may recover wages if not paid in the current coin.

5. In any action, suit, or other proceeding to be hereafter brought or commenced by any artificer against his employer, for the recovery of any sum of money due to any such artificer as the wages of his labour, the defendant shall not be allowed to make any set-off, nor to claim any reduction of the plaintiff's demand, by reason or in respect of any goods, wares, or merchandise had or received by the plaintiff as or on account of his wages or in reward for his labour, or by reason or in respect of any goods, wares, or merchandise sold, delivered or supplied, to such artificer at any shop or warehouse kept by or belonging to such employer, or in the profits of which such employer shall have any share or interest (*h*).

In an action brought for wages no set-off shall be allowed for goods supplied by the employer, or by any shop in which the employer is interested.

It is pointed out by Bowen, L. J., in *Hewlett v. Allen* ([1892] 2 Q. B. 667-8), that this section extinguishes the right of set-off only in the cases specifically mentioned therein (*i*). In the same case in the House of Lords, Lord Herschell

(*f*) As to the meaning of this section, see the remarks of Lord Herschell in *Hewlett v. Allen*, [1894] A. C., at pp. 391, 392, and of Lord Morris, *ibid.*, pp. 395, 396. And see the notes on sect. 5, *infra*.

(*g*) See sect. 10 of the Truck Act, 1887, as to articles made in the workman's own home.

(*h*) See sect. 5 of the Truck Act, 1887.

(*i*) “The general sections of the Act and the provisions which affect the civil rights of parties do not cover precisely the same ground. The payment in current coin of a portion only instead of the entire wages, may be an offence against the Act, and yet, when the workman sues to recover the unpaid portion, the employer is not precluded in all cases and every case alike, although in respect

remarks ([1894] A. C. 390): "It (sect. 5) does not touch a case of set-off of money paid for the person employed at his or her request."

As to what deductions are allowable, *Ex parte Cooper, In re Morris* (1884), 26 Ch. D. 693, is in point. Certain employers, by an arrangement with their workmen, deducted from the monthly wages so much for a doctor's fund, and a reading-room fund. There was no evidence of a contract in writing signed by the workmen allowing the payments or any evidence that the doctor had agreed to accept the liability of the employer. It was held by the Court of Appeal that there had been no payment. But both Earl Selborne and Cotton, L. J., expressly stated that they did not decide that there would not have been payment if the deductions had been made, and applied in pursuance of the workmen's directions in discharging debts for which they were liable. The same question was discussed in *Heubell v. Allen*, and received the same answer in the Divisional Court (*k*), the Court of Appeal (*l*), and the House of Lords (*m*), though in each instance upon different grounds. The facts of the case were as follows: The plaintiff, on entering the service of the defendants, her employers, signed an agreement "to conform to all the rules and regulations of Messrs. J. Allen & Sons' works, and to submit to the penalties for the breach of the same, a copy of which rules and regulations was given me at the time of signing this." One of those rules was: "All employés will have to become members of the sick and accident club." By the regulations of that club the contributions of the members were fixed, varying in amount according to the wages earned. The plaintiff's subscription, as thereby fixed, was deducted weekly from her wages, she receiving on each occasion a ticket showing her gross amount of wages, the deduction made, and the balance or net wage paid to her. She never received the benefits of the club, and she never raised any objection to this proceeding. The plaintiff sought to recover the amount of the deductions. Bowen, L. J., delivering in the Court of Appeal the judgment of himself and of Esher, M. R., held that the contract was illegal, null and void, under sect. 2 of the Act, and could not therefore be an authority for payments to the fund. "The employer cannot, for the purpose of compliance with the statute, be both payer and payee. . . . An offence against the Act has therefore to all appearance been committed, for the burden lay on the defendant to pay actual coin payable." The Court, however, held that, though the Truck Act had been infringed, the employers had a good set-off or counterclaim available to them—as not being prohibited by sect. 5 of the Act—in the fact that "these sums have been paid over professedly on the plaintiff's behalf to a trust fund of which S. Allen is trustee, and have been used for the purposes of the fund, and that she subsequently ratified and assented to such payment and expenditures." The Court also held—though it was not necessary to the decision—that, on the evidence, there had been an offence against sects. 1 and 3 of the Act.

In the House of Lords, Herschell, L. C., differed from the Court of Appeal as to the offence, holding that there had been full payment in coin. Though he thought it not quite clear whether the contract was within sect. 2. of the Act, he considered that, even assuming it was, the plaintiff's present claim was barred by her previous consent and authority. There had been in law a payment.

"The contrast in these sections is between payment in current coin of the realm and payment in some other fashion; and I can myself entertain no doubt that a payment made by an employer at the instance of a person employed to discharge some obligation of the person employed, or to place the money in the hands of some person in whose hands the person employed desires to place it, is in the sense and meaning of these sections a payment to the person employed as much as if current coin of the realm has been placed in his or her hands" (p. 389, *ibid.*). This opinion was shared by the other law lords.

Secondly, in the view of Lord Herschell, even if the contract was within the Truck Act, and the employer liable to a penalty, the payment might be pleaded as a set-off—a view which the Court of Appeal had adopted. Lord Morris thought that the contract was not within the second section; it was not a "lying out" or "expending" of wages; there was no stipulation that the payment was to be out of wages. Lord Shand took the same view, observing: "I think all employers may fairly say: 'I shall not employ or retain a servant in my employment unless

of certain specified dealings he is deprived of a particular set-off." See *Williams v. North's Navigation Collieries*, [1906] A. C. 136.

(*k*) 56 J. P. 822.

(*l*) [1892] 2 Q. B. 662.

(*m*) [1894] A. C. 383.

he contributes to a sick and benefit fund, and thus makes a provision for a time of illness, and from accident or otherwise, or it may be death.'"

It is conceived that a contract may be within the section, though the contract does not stipulate that the payment is to be made out of wages. (*vide* Lord Herschell's remarks, at p. 391, *l. c.*)

The statute may be infringed even if the artificer might have received payment in cash had he desired it. In *Wilson v. Cookson* (1863), 32 L. J. M. C. 177, it was proved that from the wages of a labourer were deducted two shillings for goods which he had received at the employer's shop. The Court of Common Pleas held that it was no answer that he might have had the two shillings in cash if he liked (*n*).

The refusal or omission to pay wages is not within the statute. Thus in *Redgrave v. Kelly* (1889), 37 W. R. 543, it was held that deductions from wages by way of fines for spoil work and impudence were not touched by the Act (irrespective apparently of their amount).

6. No employer of any artificer shall have or be entitled to maintain any suit or action in any Court of law or equity against any such artificer, for or in respect of any goods, wares, or merchandise sold, delivered, or supplied to any such artificer by any such employer, whilst in his employment, as or on account of his wages or reward for his labour, or for or in respect of any goods, wares, or merchandise sold, delivered, or supplied to such artificer at any shop or warehouse kept by or belonging to such employer, or in the profits of which such employer shall have any share or interest.

7. If any artificer, or his wife or widow, or if any child of any such artificer, not being of the full age of twenty-one years, shall become chargeable to any parish or place, and if within the space of three calendar months next before the time when any such charge shall be incurred such artificer shall have earned or have become entitled to receive any wages for any labour by him done, which wages shall not have been paid to such artificer in the current coin of this realm, it shall be lawful for the overseers or overseer of the poor in such parish or place to recover from the employer of such artificer in whose service such labour was done, the full amount of wages so unpaid, and to proceed for the recovery thereof by all such ways and means as such artificer himself might have proceeded for that purpose; and the amount of the wages which may be so recovered shall be applied in reimbursing such parish or place all costs and charges incurred in respect of the person or persons to become chargeable, and the surplus shall be applied and paid over to such person or persons.

8. Provided always, that nothing herein contained shall be construed to prevent or to render invalid any contract for the payment, or any actual payment, to any artificer, of the whole or any part of his wages, either in the notes of the governor and company of the Bank of England, or in the notes of any person or persons carrying on the business of a banker, and duly licensed to issue such notes in pursuance of the laws relating to his Majesty's revenue of stamps, or in drafts or orders for the payment of money to the

No employer shall have any action against his artificer for goods supplied to him on account of wages.

If the artificer or his wife or children become chargeable to the parish, the overseers may recover any wages earned within the three preceding months, and not paid in cash.

Not to invalidate the payment of wages in bank notes, if artificer consents.

(*n*) See *Law v. Pratt* (1843), 1 L. T. (O. S.) 623. (One of the defendants, partner in a manufacturing firm, kept a shop, at which his men were accustomed to get goods on credit. On the pay-day, once a week, the men who dealt at the shop (the plaintiff being one of them) got from the shop tickets showing their

debt, and carried them to the pay clerk, who asked them, "How much of that do you mean to get?" and gave them the difference in money. In an action for wages, to which payment was pleaded, *Creswell, J.*, directed the jury that this mode of payment was valid. But query.)

bearer on demand, drawn upon any person or persons carrying on the business of a banker, being duly licensed as aforesaid, within fifteen miles of the place where such drafts or orders shall be so paid, if such artificer shall be freely consenting to receive such drafts or orders as aforesaid, but all payments so made with such consent as aforesaid, in any such notes, drafts, or orders as aforesaid, shall for the purposes of this Act be as valid and effectual as if such payments had been made in the current coin of the realm.

Penalties on employers entering into contracts hereby declared illegal.

9. Any employer of any artificer, who shall, by himself or by the agency of any other person or persons, directly or indirectly enter into any contract or make any payment hereby declared illegal (*o*), shall for the first offence forfeit a sum not exceeding ten pounds [*not less than five pounds*] (*p*), and for the second offence any sum not exceeding twenty pounds nor less than ten pounds, and in case of a third offence, any such employer shall be and be deemed guilty of a misdemeanor, and, being thereof convicted, shall be punished by fine only, at the discretion of the Court, so that the fines shall not in any case exceed the sum of one hundred pounds.

This penalty and the liability under section 4 are cumulative: *Wilson v. Cookson* (1863), 32 L. J. M. C. 177.

This section is extended to agents by section 12 of the Truck Amendment Act, 1887. See sect. 13, sub-s. (1) of the Truck Act, 1887, for the maximum penalty to be imposed on summary conviction.

Proviso as to second offence.

10. (*q*) Provided always, that no person shall be punished as for a second offence under this Act, unless ten days at the least shall have inter-

(*o*) *Ashersmith v. Drury* (1858), 28 L. J. M. C. 5: An employer, the defendant, refused money to a workman's wife, but gave her a "shop note," to take to a clerk. The clerk refused money but gave her an order for a shop, which he mentioned. The justices found that the defendant knew and intended when he gave the first note, that she was to get goods and not money. Held (by Campbell, C. J., Wightman, Erle, Hill, JJ.) that the giving of the note was an offence against the Act, and was complete at the giving of the first note. *Wilson v. Cookson* (1863), 32 L. J. M. C. 177: It is not necessary that the payment other than in coin should be in pursuance of a contract; and if a workman of his own accord receives goods, and the master deducts the price, it is an offence under sects. 3 and 9. *Fisher v. Jones* (1863), 32 L. J. M. C. 177: Appellant worked for the respondent and dealt at his shop. The amounts of the purchases were deducted from appellant's pay, but he had his wages when he liked, and the taking of the goods was wholly optional. Held (by Williams, Willes, Keating, JJ.) that an offence had been committed, and that subsequent payment did not purge the offence. *Smith v. Walton* (1877), L. R. 3 C. P. D. 109: An arti-

ficer within the Truck Act in the employment of the respondent wove a piece of cotton cloth which was defective; the respondent delivered to him the piece of damaged cloth instead of a part of the wages which were due to the appellant; an offence within the Act. "The respondent has deducted the whole value (of the cloth), and throughout the transaction the damaged piece is treated as part of the cost." *Grove, J. Gould v. Haynes* (1889), 59 L. J. M. C. 9: The respondent, who was a publican and a brick-maker, supplied workmen employed at his brickfield with liquor to the amount of 3s. 10d. on credit, entries thereof being made in his books. In the evening the respondent handed across the bar to one of the workmen on behalf of the others, who were there, 4s., which was immediately given back, 2d. being returned by the employer as change, and the entries crossed off. Next day the wages were paid by the respondent to the workmen in coin, 4s. being deducted therefrom; Held: an offence within the Truck Acts.

(*p*) Words in brackets repealed except as to Ireland by the Statute Law Revision Act, 1891.

(*q*) The first part of this section repealed by Truck Act, 1887.

vened between the conviction of such person for the first and the conviction of such person of the second offence, but each separate offence committed by any such person before the expiration of the said term of ten days shall be punishable by a separate penalty, as though the same were a first offence; and that no person shall be punished as for a third offence under this Act, unless ten days at the least shall have intervened between the conviction of such person for the second and the conviction by such person of the third offence; but each separate offence committed by any such person before the expiration of the said term of ten days shall be punishable by a separate penalty, as though the same were a second offence; and that the fourth or any subsequent offence which may be committed by any such person against this Act shall be enquired of, tried, and punished in the manner hereinbefore provided in respect of any third offence; and that if the person or persons preferring any such information shall not be able or shall not see fit to produce evidence of any such previous conviction or convictions as aforesaid, any such offender as aforesaid shall be punished for each separate offence by him committed against the provisions of this Act by an equal number of distinct and separate penalties, as though each of such offences were a first or second offence, as the case may be; and that no person shall be proceeded against or punished as for a second or as for a third offence at the distance of more than two years from the commission of the next preceding offence.

Sections 11 and 12 repealed by Truck Amendment Act, 1887.

13. No person shall be liable to be convicted of any offence against this Act committed by his or her co-partner in trade, and without his or her knowledge, privity, or consent; but it shall be lawful, when any penalty, or any sum for wages, or any other sum, is ordered to be paid, under the authority of this Act, and the person or persons ordered to pay the same shall neglect or refuse to do so, to levy the same by distress and sale of any goods belonging to any co-partnership concern or business in the carrying on of which such charges may have become due or such offence may have been committed; and in all proceedings under this Act to recover any sum due for wages it shall be lawful in all cases of co-partnership for the justices, at the hearing of any complaint for the non-payment thereof, to make an order upon any one or more co-partners for the payment of the sum appearing to be due: and in such case the service of a copy of any summons or other process, or of any order, upon one or more of such co-partners, shall be deemed to be a sufficient service upon all.

A partner not to be liable in person for the offence of his co-partner, but the partnership property to be so liable.

14. In all cases it shall be deemed and taken to be sufficient service of any summons to be issued against any offender or offenders by any justice or justices of the peace, under the authority of this Act, if a duplicate or true copy of the same be left at or upon the place used or occupied by such offender or offenders for carrying on his, her, or their trade or business, or at the place of residence of any such offender or offenders, being at or upon any such place as aforesaid, the same being directed to such offender or offenders by his, her, or their right or assumed name or names.

How summonses are to be served.

Sections 15 and 16 repealed by Truck Amendment Act, 1887.

17. No conviction, order, or adjudication made by any justice of the peace under the provisions of this Act shall be quashed for want of form, nor be removed by *certiorari* or otherwise into any of his Majesty's superior Courts

Convictions not to be quashed for want of form,

of record; [and no warrant of distress, or of commitment in default of sufficient distress, shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same](*r*).

Sections 18 and 19 repealed by Truck Amendment Act, 1887.

Sect. 19 enumerated the trades to which the Act applied, but now see the Act of 1887, s. 2.

Domestics.

20. Nothing herein contained shall extend to any domestic servant.

Sections 21 and 22 repealed by Truck Amendment Act, 1887.

Particular exceptions to the generality of the law.

23. Nothing herein contained shall extend or be construed to extend to prevent any employer of any artificer, or agent of any such employer, from supplying or contracting to supply to any such artificer any medicine or medical attendance, or any fuel, or any materials, tools, or implements to be by such artificer employed in his trade or occupation, if such artificers be employed in mining, or any hay, corn, or other provender to be consumed by any horse or other beast of burden employed by any such artificer in his trade and occupation; nor from demising to any artificer the whole or any part of any tenement at any rent to be thereon reserved; nor from supplying or contracting to supply to any such artificer any victuals dressed or prepared under the roof of any such employer, and there consumed by such artificer; nor from making or contracting to make any stoppage or deduction from the wages of any such artificer, for or in respect of any such rent; or for or in respect of any such medicine or medical attendance; or for or in respect of such fuel, materials, tools, implements, hay, corn, or provender, or of any such victuals dressed and prepared under the roof of any such employer; or for or in respect of any money advanced to such artificer for any such purpose as aforesaid: provided always, that such stoppage or deduction shall not exceed the real and true value of such fuel, materials, tools, implements, hay, corn, and provender, and shall not be in any case made from the wages of such artificer, unless the agreement or contract for such stoppage or deduction shall be in writing, and signed by such artificer.

The deductions mentioned in sections 23 and 24 are the only deductions permitted by the Act: *Williams v. North's Navigation Collieries, Ltd.*, [1906] A. C. 136.

See sects. 7, 8, and 9 of the Truck Amendment Act, 1887.

The following are some of the chief results of the decisions:

The "tools," &c., supplied mean tools, &c., in which the property has passed. "The medicine supplied does not mean lent or given to be returned, neither is that the meaning of the word as to tools. The same reason applies to the provision as to hay, &c.": per Bramwell, B., in *Archer v. James* (1862), 2 B. & S. 61, 94. See also *Cutts v. Ward* (1867), L. R. 2 Q. B. 357, where it was also held that the written contract need not specify the amounts to be deducted. The so-called "deductions" are permissible, if not a part of the wages: *Archer v. James, ubi sup.*; *Albutt v. Taylor* (reported in Memorandum on Truck Acts; Bluebook, 1896—C.—8048): both these cases followed *Chavner v. Cammies* (1845), 8 Q. B. 311.

Deductions for doctors and sick funds, for the purpose of providing medical attendance and relief in sickness for the workmen, and for a school fund for providing free schools for the workmen's children (see section 24), are illegal unless there is a written and signed agreement: *Pillar v. Llynvi Coal and Iron Co.* (1868), L. R. 4 C. P. 752. In *Lamb v. Great Northern Rail. Co.*, [1891] 2 Q. B. 281, plaintiff, a porter in the service of the defendant company, signed a written agree-

(*r*) Words within brackets repealed, as regards England, by Summary Jurisdiction Act, 1884.

ment stipulating for a deduction from his wages as a contribution to a sick and funeral fund. Plaintiff received benefits under the fund. A. L. Smith, J., decided against the plaintiff mainly on the ground that even if the sick fund were outside the section, the benefits which he had received as to medical attendance exceeded the contributions.

24. Nothing herein contained shall extend or be construed to extend to prevent any such employer from advancing to any such artificer any money to be by him contributed to any friendly society or bank for savings duly established according to law, nor from advancing to any such artificer any money for his relief in sickness, or for the education of any child or children of such artificer, nor from deducting or contracting to deduct any sum or sums of money from the wages of such artificer for the education of any such child or children of such artificer

Employers may advance money to artificers for certain purposes.

See *Pillar v. Llywri, &c.*, *ubi sup.* (after section 23).

Lord Watson in *Hewlett v. Allen*, [1894] A. C. at p. 395, expresses the opinion that this section supports the inference that the Truck Act is not aimed at advances of sums to be paid to private clubs, which are identical in their objects with "friendly societies or banks for savings duly established according to law."

25. In the meaning and for the purposes of this Act all masters, bailiffs, foremen, managers, clerks, and other persons engaged in the hiring, employment, or superintendence of the labour of any such artificers, shall be and be deemed to be "employers;" and within the meaning and for the purposes of this Act any money or other thing had or contracted to be paid, delivered, or given as a recompense, reward, or remuneration for any labour done or to be done, whether within a certain time or to a certain amount, or for a time or an amount uncertain, shall be deemed and taken to be the "wages" of such labour; and within the meaning and for the purposes aforesaid any agreement, understanding, device, contrivance, collusion, or arrangement whatsoever on the subject of wages, whether written or oral, whether direct or indirect, to which the employer and artificer are parties or are assenting, or by which they are mutually bound to each other, or whereby either of them shall have endeavoured to impose an obligation on the other of them, shall be and be deemed a "contract."

Definition of terms.

See as to the definition of "wages" the notes on sect. 1, *supra*.

In *Jones v. Wasley* (1902), 18 Times L. R. 418, there was a written agreement of service at a fixed rate of wages. There was also a verbal arrangement made at the same time for the supply of cider in part payment of wages. *Held*, that evidence of that arrangement was properly admitted.

27. And be it further enacted, that the provisions of this Act shall extend over the whole of that part of the United Kingdom of Great Britain and Ireland called Great Britain.

To extend over Great Britain.

The schedule of forms to be used in proceedings for penalties under the Act was repealed as to England by Summary Jurisdiction Act, 1884, and *in toto* by the Truck Act of 1887.

8 & 9 VICT. c. 128 (1845).

An Act to make further regulations respecting the tickets of work to be delivered to silk weavers in certain cases.

Manufacturer to deliver with warp a ticket of work.

Section 1 cites 5 Geo. IV. c. 96, and enacts that, "When any manufacturer of silk goods or of goods made of silk mixed with other materials, or the agent of any such manufacturer, gives out to a weaver of such goods a piece of warp to be woven, such manufacturer or agent shall at the same time deliver to such weaver (unless both parties shall by writing under their respective hands agree to dispense therewith) a printed or written ticket, signed by such manufacturer or agent, containing the following particulars of the agreement between such manufacturer or agent and such weaver; (that is to say,) the count or richness of the warp or cane: The number of shoots or picks required in each inch; The number of threads of weft to be used in each shoot; The name of the manufacturer, or the style of the firm under which he carries on business; The weaver's name, with the date of the engagement; And the price in sterling money agreed on for executing each yard imperial standard measure of thirty-six inches of such work in a workmanlike manner: And such manufacturer or agent delivering such ticket shall make or cause to be made, and shall preserve until the work contracted to be done shall have been completed or paid for, a duplicate of such note or ticket.

Ticket to be evidence in cases of dispute:

2. That in the event of any dispute between the manufacturer or his agent and the workmen, such ticket and the said duplicate thereof shall be required to be produced, and shall, together or either of them, be evidence of all things mentioned therein, or respecting the same.

and work to be produced in order to adjudication.

3. Provided always, that where the subject of dispute relates to the alleged improper or imperfect execution of any work delivered to any manufacturer or his agent, such piece of work shall be produced, in order to adjudication, or if not produced shall be deemed and taken to have been sufficiently and properly executed.

Levying and application of penalty.

6. . . . The said penalty(s) shall be paid over to the sheriff or other proper officer of the county, city, borough, or place in which such conviction shall take place, for her Majesty's use, and shall be returned to the court of quarter sessions, under the provisions of an Act passed in the third year of the reign of King George the Fourth, intituled "An Act for the more speedy Return and Levying of Fines, Penalties, and Forfeitures, and Recognizances estreated."

No certiorari allowed.

7. (Recovery of wages and sums due for work—Repealed by 38 & 39 Vict. c. 86, s. 17, *post*.)

8. That no order or conviction or proceeding touching the same respectively, shall be quashed for want of form, or be removed by *certiorari* or otherwise into any of her Majesty's superior courts of record. . . .

Sects. 4 and 5, the first portion of sect. 6, and the last of sect. 8 are repealed by Statute Law Revision Act, 1892.

(s) These words refer to the penalties imposed on recusant witnesses by sect. 4 now repealed.

37 & 38 VICT. c. 48 (1874).

An Act to provide for the payment of wages without stoppages in the hosiery manufacture.

Whereas a custom has prevailed among the employers of artificers in the hosiery manufacture of letting out frames and machinery to the artificers employed by them, and it is desirable to prohibit such letting of frames and machinery, and the stoppage of wages for frame rents and charges in the hosiery manufacture. Be it enacted as follows :

1. In all contracts for wages the full and entire amount of all wages, the earnings of labour in the hosiery manufacture, shall be actually and positively made payable in net, in the current coin of the realm, and not otherwise, without any deduction or stoppage of any description whatever, save and except for bad and disputed workmanship.

Wages to be paid without any stoppages whatever.

2. All contracts to stop wages, and all contracts for frame rents and charges, between employers and artificers, shall be and are hereby declared to be illegal, null, and void (*t*).

Contracts to stop wages and for frame rents illegal.

3. If any employer shall bargain to deduct, or shall deduct, directly or indirectly, from the wages of any artificer in his employ, any part of such wages for frame rent and standing or other charges, or shall refuse or neglect to pay the same or any part thereof in the current coin of the realm, he shall forfeit a sum of five pounds for every offence, to be recovered by the said artificer or any other person suing for the same in the county court (*u*) in the district where the offence is committed, with full costs of suit.

Penalty for bargaining to deduct and for deducting from wages.

The deduction of a fine for non-attendance from wages is not within this section : *Willis v. Thorp* (1875), L. R. 10 Q. B. 383.

4. If any frame or machine which shall have been entrusted to any artificer or other person by his employer for the purpose of being used in the hosiery manufacture for such employment, or in any process incident to such manufacture, shall, whilst the same shall be so entrusted, be worked, used, or employed without the consent in writing of such employer or other person so entrusting such frame or machine, in the manufacture of any goods or articles whatever for any other person than the person by whom such frame or machine shall have been so entrusted, then and in every such case the artificer or other person to whom the same shall have been so entrusted, shall forfeit and pay the sum of ten shillings for every day on any part of which any such frame or machine shall have been so worked, used, or employed, to be recoverable by and for the benefit of the person who shall have so entrusted the same, in the county court (*u*) for the district where the offence shall have been committed, with full costs of suit.

Penalty for using frame otherwise than for the purpose for which same lent.

5. No action, suit, or set-off between employer and artificer shall be allowed for any deduction or stoppage of wages, nor for any contract hereby declared illegal.

No action to be allowed in respect of any such bargaining.

(*t*) See Truck Act, 1896, s. 8.

(*u*) The general rules of practice apply to these actions: see County Court

Rules, 1903, Order L. rr. 35, 36; and an appeal lies in the ordinary way: see *Willis v. Thorp* (1875), L. R. 10 Q. B. 383.

Employer
may recover
debt due to
him from
artificer.
Definition of
terms.

6. Nothing in this Act contained shall extend to prevent the recovery in the ordinary course of law, by suit brought or commenced for the purpose, of any debt due from the artificer to the employer.

7. Within the meaning and for the purposes of this Act, all workmen, labourers, and other persons in any manner engaged in the performance of any employment or operation, of what nature soever, in or about the hosiery manufacture, shall be and be deemed "artificers;" and, within the meaning and for the purposes aforesaid, all masters, foremen, managers, clerks, contractors, sub-contractors, middlemen, and other persons engaged in the hiring, employment, or superintendence of the labour of any such artificer shall be and be deemed to be "employers;" and, within the meaning and for the purposes of this Act, any money or other thing had or contracted to be paid, delivered, or given as a recompense, reward, or remuneration for any labour done or to be done, whether within a certain time or to a certain amount, or for a time or for an amount uncertain, shall be deemed and taken to be the wages of such labour; and, within the meaning and for the purposes aforesaid, any agreement, understanding, device, contrivance, collusion, or arrangement whatsoever on the subject of wages, whether written or oral, whether direct or indirect, to which the employer and artificers are parties, or are assenting, or by which they are mutually bound to each other, or whereby either of them shall have endeavoured to impose an obligation on the other of them, shall be and be deemed a "contract."

Short title.

9. This Act may be cited for all purposes as "The Hosiery Manufacture (Wages) Act, 1874."

50 & 51 VICT. c. 46 (1887).

An Act to amend and extend the Law relating to Truck.

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1 & 2 Will. 4,
c. 37.

1. This Act may be cited as the Truck Amendment Act, 1887. The Act of the session of the first and second years of the reign of King William the Fourth, chapter thirty-seven, intituled "An Act to prohibit the payment in certain trades of wages in goods or otherwise than in the current coin of the realm" (in this Act referred to as the principal Act) may be cited as the Truck Act, 1831, and that Act and this Act may be cited together as the Truck Acts, 1831 and 1887, and shall be construed together as one Act.

Application of
principal Act
to workman as
defined by
38 & 39 Viet.
c. 90.

2. The provisions of the principal Act shall extend to, apply to, and include any workman as defined in the Employers and Workmen Act, 1875, section ten (*x*), and the expression "artificer" in the principal Act shall be construed to include every workman to whom the principal Act is extended

(*x*) See the notes on that section at p. 617, *infra*.

and applied by this Act, and all provisions and enactments in the principal Act inconsistent herewith are hereby repealed.

3. Whenever by agreement, custom, or otherwise a workman is entitled to receive in anticipation of the regular period of the payment of his wages an advance as part or on account thereof it shall not be lawful for the employer to withhold such advance or make any deduction in respect of such advance on account of poundage, discount, or interest, or any similar charge. Advance of wages.

4. Nothing in the principal Act or this Act shall render illegal a contract with a servant in husbandry for giving him food, drink, not being intoxicating, a cottage, or other allowances or privileges in addition to money wages as a remuneration for his services. Saving for servant in husbandry.

5. In any action brought by a workman for the recovery of his wages, the employer shall not be entitled to any set-off or counterclaim in respect of any goods supplied to the workman by any person under any order or direction of the employer, or any agent of the employer, and the employer of a workman or any agent of the employer, or any person supplying goods to the workman under any order or direction of such employer or agent, shall not be entitled to sue the workman for or in respect of any goods supplied by such employer or agent, or under such order or direction, as the case may be. Order for goods as a deduction from wages illegal.

Provided that nothing in this section shall apply to anything excepted by section twenty-three of the principal Act.

This proviso is probably surplusage: *Lamb v. Great Northern Rail. Co.*, [1891] 2 Q. B. 281.

6. No employer shall, directly or indirectly, by himself or his agent, impose as a condition, express or implied, in or for the employment of any workman any terms as to the place at which, or the manner in which, or the person with whom, any wages or portion of wages paid to the workman are or is to be expended, and no employer shall by himself or his agent dismiss any workman from his employment for or on account of the place at which, or the manner in which, or the person with whom, any wages or portion of wages paid by the employer to such workman are or is expended or fail to be expended. No contracts with workman as to spending wages at any particular shop, &c.

Probably this section to "expended" merely repeats sect. 2 of the principal Act, and it does not apply to any contract excepted by sect. 23 of the principal Act: *Lamb v. Great Northern Rail. Co.*, *ubi sup.*

7. Where any deduction is made by an employer from a workman's wages for education, such workman on sending his child to any state-inspected school selected by the workman shall be entitled to have the school fees of his child at that school paid by the employer at the same rate and to the same extent as the other workmen from whose wages the like deduction is made by such employer. Deduction for education.

In this section "state-inspected school" means any elementary school inspected under the direction of the Education Department in England or Scotland or of the Board of National Education in Ireland.

8. No deduction shall be made from a workman's wages for sharpening or repairing tools, except by agreement not forming part of the condition of hiring. Deduction for sharpening tools, &c.

Audit of deductions.

9. Where deductions are made from the wages of any workmen for the education of children or in respect of medicine, medical attendance, or tools, once at least in every year the employer shall, by himself or his agent, make out a correct account of the receipts and expenditure in respect of such deductions, and submit the same to be audited by two auditors appointed by the said workmen, and shall produce to the auditors all such books, vouchers, and documents, and afford them all such other facilities as are required for such audit.

See sect. 23 of principal Act.

Artificer to be paid in cash and not by way of barter for articles made by him.

10. Where articles are made by a person at his own home, or otherwise, without the employment of any person under him except a member of his own family, the principal Act and this Act shall apply as if he were a workman, and the shopkeeper, dealer, trader, or other person buying the articles in the way of trade were his employer, and the provisions of this Act with respect to the payment of wages shall apply as if the price of an article were wages earned during the seven days next preceding the date at which any article is received from the workman by the employer.

This section shall apply only to articles under the value of five pounds knitted or otherwise manufactured of wool, worsted, yarn, stuff, jersey, linen, fustian, cloth, serge, cotton, leather, fur, hemp, flax, mohair, or silk, or of any combination thereof, or made or prepared of bone, thread, silk, or cotton lace, or of lace made of any mixed materials. Where it is made to appear to Her Majesty the Queen in Council that, in the interests of persons making articles to which this section applies in any county or place in the United Kingdom, it is expedient so to do, it shall be lawful for Her Majesty, by Order in Council, to suspend the operation of this section in such county or place, and the same shall accordingly be suspended, either wholly or in part, and either with or without any limitation or exceptions, according as is provided by the Order.

This alters as to the articles mentioned the definition of "wages" in *Chaener v. Cummings* and *Archer v. Jones*: see notes on sect. 1 of principal Act.

Offences.

11. If any employer or his agent contravenes or fails to comply with any of the foregoing provisions of this Act, such employer or agent, as the case may be, shall be guilty of an offence against the principal Act, and shall be liable to the penalties imposed by section nine of that Act as if the offence were such an offence as in that section mentioned.

Fine on person committing offence for which employer is liable, and power of employer to exempt himself from penalty on conviction of actual offender.

12.—(1) Where an offence for which an employer is, by virtue of the principal Act or this Act, liable to a penalty has in fact been committed by some agent of the employer or other person, such agent or other person shall be liable to the same penalty as if he were the employer.

(2) Where an employer is charged with an offence against the principal Act or this Act he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved the employer proves to the satisfaction of the Court that he has used due diligence to enforce the execution of the said Acts, and that the said other person had committed the

offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the employer shall be exempt from any penalty.

When it is made to appear to the satisfaction of an inspector of factories or mines, or in Scotland a procurator fiscal, at the time of discovering the offence, that the employer had used due diligence to enforce the execution of the said Acts, and also by what person such offence had been committed, and also that it had been committed without the knowledge, consent, or connivance of the employer, then the inspector or procurator fiscal shall proceed against the person whom he believes to be the actual offender in the first instance without first proceeding against the employer.

Cf. sects. 140, 141, of the Factory and Workshops Act, 1901, and sect. 6 of the Shop Hours Act, 1892.

13.—(1) Any offence against the principal Act or this Act may be prosecuted, and any penalty therefor recovered in manner provided by the Summary Jurisdiction Acts, so however that no penalty shall be imposed on summary conviction exceeding that prescribed by the principal Act for a second offence (*y*). Recovery of penalties.

See sect. 17 of the principal Act. No right of appeal to Quarter Sessions is given by that Act or by 42 & 43 Vict. c. 49, s. 19 (Summary Jurisdiction Act, 1879); but there is a right of stating a special case for the opinion of the Court. (S. J. Act, 1879, s. 33.)

(2) It shall be the duty of the inspectors of factories and the inspectors of mines to enforce the provisions of the principal Act and this Act within their districts so far as respects factories, workshops, and mines inspected by them respectively, and such inspectors shall for this purpose have the same powers and authorities as they respectively have for the purpose of enforcing the provisions of any Acts relating to factories, workshops, or mines, and all expenses incurred by them under this section shall be defrayed out of moneys provided by Parliament.

(3) In England all penalties recovered under the principal Act and this Act shall be paid into the receipt of Her Majesty's Exchequer, and be carried to the Consolidated Fund.

(4) In Scotland—

(a) The procurators fiscal of the sheriff court shall, as part of their official duty, investigate and prosecute offences against the principal Act or this Act, and such prosecution may also be instituted in the sheriff court at the instance of any inspector of factories or inspector of mines;

(b) All offences against the said Acts shall be prosecuted in the sheriff court.

The powers of inspectors are extended by sect. 10 of the Truck Act, 1896.

(*y*) Not more than 20*l.* nor less than 10*l.* : *vide* sect. 9 of principal Act.

- Definitions.** **14.** In this Act, unless the context otherwise requires,—
 The expression “Summary Jurisdiction Acts” means, as respects England, the Summary Jurisdiction Acts as defined by the Summary Jurisdiction Act, 1879; and, as respects Scotland, means the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and any Acts amending the same;
 Other expressions have the same meaning as in the principal Act.
- Disqualification of justice.** **15.** So much of the principal Act as disqualifies any justice from acting as such under the principal Act is hereby repealed.
 A person engaged in the same trade or occupation as an employer charged with an offence against the principal Act or this Act shall not act as a justice of the peace in hearing and determining such charge.
 See sects. 21 and 22 of the principal Act.
- Amendment of 1 & 2 Will. 4, c. 37, as to overseers.** **16.** The provisions of the principal Act conferring powers on any overseers or overseer of the poor shall be deemed to confer those powers in the case of England on the guardians of a union, and in the case of Scotland on the inspectors of the poor.
- Repeal.** **17** The Acts mentioned in the schedule to this Act are hereby repealed to the extent in the third column of the said schedule mentioned, without prejudice to anything heretofore done or suffered in respect thereof.
- Application of Acts to Ireland.** **18.** The principal Act, so far as it is not hereby repealed, and this Act shall extend to Ireland, subject to the following provisions:
 (1) Any offence against the principal Act or this Act may be prosecuted and any penalty therefor may be recovered in the manner provided by the Summary Jurisdiction (Ireland) Acts; (that is to say,) within the Dublin Metropolitan Police District the Acts regulating the powers and duties of justices of the peace and of the police of that district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and the Acts amending the same;
 (2) Penalties recovered under the principal Act or this Act shall be applied in the manner directed by the Fines (Ireland) Act, 1851, and the Acts amending the same.

SCHEDULE.

Session and Chapter.	Title of Act.	Extent of Repeal.
12 Geo. I. c. 34	An Act to prevent unlawful combinations of workmen employed in the woollen manufactures, and for better payment of their wages.	Section three, and so much of section eight as applies section three.
22 Geo. II. c. 27	An Act, the title of which begins with "An Act for the more effectual preventing of frauds," and ends with the words "and for the better payment of their wages."	So much of section twelve as applies to any enactment repealed by this Act.
30 Geo. II. c. 12	An Act, the title of which begins with the words "An Act to amend an Act," and ends with the words "payment of the workmen's wages in any other manner than in money."	Sections two and three.
57 Geo. III. c. 115	An Act, the title of which begins with the words "An Act to extend the provisions of an Act," and ends with the words "articles of cutlery."	The whole Act.
57 Geo. III. c. 122	An Act, the title of which begins with the words "An Act to extend the provisions," and ends with the words "extending the provisions of the said Acts to Scotland and Ireland."	The whole Act.
1 & 2 Will. IV. c. 37 ..	An Act to prohibit the payment in certain trades of wages in goods or otherwise than in the current coin of the realm.	Section ten, down to "be produced to the Court and jury" inclusive; section eleven, section twelve, section fifteen, section sixteen, section eighteen, section nineteen, in section twenty the words "or servant in husbandry"; section twenty-one, section twenty-two, section twenty-four from "and unless the agreement" inclusive to end of section, and section twenty-five from "all workmen" to "purposes aforesaid" both inclusive, and the schedules.

59 & 60 VICT. c. 44 (1896).

An Act to amend the Truck Acts.

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Deductions or
payments in
respect of
fines.

1.—(1) An employer shall not make any contract with any workman for any deduction from the sum contracted to be paid by the employer to the workman, or for any payment to the employer by the workman, for or in respect of any fine, unless—

- (a) The terms of the contract are contained in a notice kept constantly affixed at such place or places open to the workmen and in such a position that it may be easily seen, read, and copied by any person whom it affects ; or the contract is in writing, signed by the workman ; and
- (b) The contract specifies the acts or omissions in respect of which the fine may be imposed, and the amount of the fine or the particulars from which that amount may be ascertained ; and
- (c) The fine imposed under the contract is in respect of some act or omission which causes or is likely to cause damage or loss to the employer, or interruption or hindrance to his business ; and
- (d) The amount of the fine is fair and reasonable having regard to all the circumstances of the case.

(2) An employer shall not make any such deduction or receive any such payment, unless—

- (a) The deduction or payment is made in pursuance of, or in accordance with, such a contract as aforesaid ; and
- (b) Particulars in writing showing the acts or omissions in respect of which the fine is imposed and the amount thereof are supplied to the workman on each occasion when a deduction or payment is made.

(3) This section shall apply to the case of a shop assistant in like manner as it applies to the case of a workman.

The fact that an agreement is within this section does not oust the jurisdiction of justices under the Employers and Workmen Act, 1875 : *Buxton Line Firms Co., Ltd. v. Howe*, [1900] 2 Q. B. 232.

A rule forming part of the contract between a factory owner and his employees provided that "all workers shall observe good order and decorum while in the factory," and imposed a fine for infringement : *Held*, a sufficient compliance with sub-sect. 1 (b) : *Squire v. Bayer & Co.*, [1901] 2 K. B. 299.

Deductions or
payments in
respect of
damaged
goods.

2.—(1) An employer shall not make any contract with any workman for any deduction from the sum contracted to be paid by the employer to the workman, or for any payment to the employer by the workman for or in respect of bad or negligent work or injury to the materials or other property of the employer, unless—

- (a) The terms of the contract are contained in a notice kept constantly affixed at such place or places open to the workmen and in such a

position that it may be easily seen, read, and copied by any person whom it affects; or the contract is in writing, signed by the workman; and

- (b) The deduction or payment to be made under the contract does not exceed the actual or estimated damage or loss occasioned to the employer by the act or omission of the workman, or of some person over whom he has control, or for whom he has by the contract agreed to be responsible; and
- (c) The amount of the deduction or payment is fair and reasonable, having regard to all the circumstances of the case.
- (2) An employer shall not make any such deduction or receive any such payment unless—
 - (a) The deduction or payment is made in pursuance of, or in accordance with, such a contract as aforesaid; and
 - (b) Particulars in writing showing the acts or omissions in respect of which the deduction or payment is made and the amount thereof are supplied to the workman on each occasion when a deduction or payment is made.

3.—(1) An employer shall not make any contract with any workman for any deduction from the sum contracted to be paid by the employer to the workman, or for any payment to the employer by the workman for, or in respect of, the use or supply of materials, tools or machines, standing room, light, heat, or for or in respect of any other thing to be done or provided by the employer in relation to the work or labour of the workman unless—

Deductions or payments in respect of materials.

- (a) The terms of the contract are contained in a notice kept constantly affixed at such place or places open to workmen, and in such a position that it may be easily seen, read, and copied by any person whom it affects; or the contract is in writing, signed by the workman; and
- (b) The sum to be paid or deducted under the contract in respect of materials, tools or machines, standing room, light, heat, or any other thing, does not exceed, in the case of materials or tools supplied to the workman, the actual or estimated cost thereof to the employer, or in the case of the use of machinery, light, heat, or any other thing in this section mentioned, a fair and reasonable rent or charge, having regard to all the circumstances of the case.
- (2) An employer shall not make any such deduction or receive any such payment, unless—
 - (a) The deduction or payment is made in pursuance of, and in accordance with, such a contract as aforesaid; and
 - (b) Particulars in writing showing the things in respect of which the deduction or payment is made and the amount thereof are supplied to the workman on each occasion when a deduction or payment is made.

4. If any employer enters into any contract contrary to this Act, or makes any deduction or receives any payment contrary to this Act, he shall be guilty of an offence against the Truck Act, 1831, and shall be liable to the penalties imposed by section nine of that Act as if the offence were an offence in that section mentioned.

Penalty.

1 & 2 Will. 4, c. 37.

Recovery of
payments or
deductions.

5. Any workman or shop assistant may recover any sum deducted by or paid to his employer contrary to this Act, provided that proceedings for such recovery are commenced within six months from the date of the deduction or payment sought to be recovered, and that where he has consented to or acquiesced in any such deduction or payment, he shall only recover the excess which has been deducted or paid over the amount, if any, which the Court may find to have been fair and reasonable, having regard to all the circumstances of the case.

Production of
contract.

6.—(1) Every employer who has made any contract purporting or intending to operate as a contract under this Act, shall, on demand in writing by one of her Majesty's inspectors of factories or of mines, produce the contract or a true copy thereof at any convenient time and place to be named by the inspector, and the inspector shall be at liberty to take a copy of the same or of any part thereof, and the employer of any workman or shop assistant who is party to any such contract shall at the time of making the contract give the workman or shop assistant a copy of the contract or of the notice containing its terms.

(2) A workman or shop assistant who is party to any such contract shall be entitled, on request, to obtain from his employer free of charge a copy of the contract or of the notice containing its terms.

(3) Every employer who has made any contract purporting or intending to operate as a contract under section one of this Act shall keep a register of deductions or payments, and shall enter therein every deduction or payment for or in respect of any fine purporting to be made under any such contract, specifying the amount and the nature of the act or omission in respect of which the fine was imposed, and this register shall be at all times open to inspection by one of her Majesty's inspectors of factories or of mines.

(4) If any person fails to comply with this section he shall be liable on summary conviction to a fine not exceeding forty shillings.

Exemption of
contract from
stamp duty.

7. A contract entered into under the provisions of this Act shall not be liable to stamp duty.

Saving as to
contracts and
payments
illegal under
existing Acts.

1 & 2 Will. 4,
c. 37.

50 & 51 Vict.

c. 46.

37 & 38 Vict.

c. 48.

50 & 51 Vict.

c. 58.

Power to
exempt from
provisions of
Act.

8. Nothing in this Act shall make lawful any contract or payment which is illegal under the Truck Acts, 1831 and 1887, or under the Hosiery Manufacture (Wages) Act, 1874, or affect the provisions of the Coal Mines Regulation Act, 1887, or any amending Act, with respect to persons employed in mines and paid according to weight, or make lawful any deduction from payments made to those persons.

9.—(1) The Secretary of State, if satisfied that the provisions of this Act are unnecessary for the protection of the workmen employed in any trade or business, or in any branch or department of any trade or business, either generally or within any specified area, may by order under his hand grant an exemption from those provisions in respect of the persons engaged in that trade, business, branch or department, either generally or within that area.

(2) The Secretary of State may at any time amend or revoke any such order.

(3) Every order made under this section shall be laid as soon as may be before both Houses of Parliament, and if either House within the next forty

days after the order has been so laid before that House resolves that the order ought to be annulled, the order shall, after the date of that resolution, be of no effect, without prejudice to the validity of anything done in the meantime under the order or to the making of a new order.

See order of March 9th, 1897, and of July 30th, 1897: St. R. & O. 1897, pp. 459, 460.

10. Sub-section two of section thirteen of the Truck Amendment Act, 1887 (which relates to the duty of inspectors), shall apply in the case of a laundry, and in the case of any place where work is given out by the occupier of a factory or workshop, or by a contractor, or sub-contractor, in like manner as it applies in the case of a factory. Duties of inspectors.
50 & 51 Vict.
c. 46.

11. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-seven. Commence-
ment.

12. This Act may be cited as the Truck Act, 1896; and the Truck Acts, 1831 and 1887, and this Act shall be construed together as one Act and may be cited collectively as the Truck Acts, 1831 to 1896. Short title and
construction.

CHAPTER V.

ACTS RELATING TO CHIMNEY SWEEPERS.

3 & 4 VICT. c. 85 (1840).

An Act for the Regulation of Chimney Sweepers and Chimneys (a).

Penalty for compelling or allowing children to climb chimneys.

No child under sixteen years to be apprenticed to a chimney sweeper.

Regulating construction of chimneys.

2. Any person who shall compel or knowingly allow any child or young person under the age of twenty-one years to ascend or descend a chimney, or enter a flue, for extinguishing fire therein, shall be liable to a penalty of not more than ten pounds [*or* less than five pounds (*aa*)].

3. It shall not be lawful to apprentice to any person using the trade or business of a chimney-sweeper any child under the age of sixteen years, and every indenture of such apprenticeship which may be entered into shall be null and void.

Sections 4 and 5 temporary provisions now repealed.

6. And whereas it is expedient, for the better security from accidents from fire or otherwise, the improved construction of chimneys and flues (*a*), provided by the said Act be continued: Be it enacted, that all withs and partitions between any chimney or flue, which at any time after the passing of this Act shall be built or rebuilt, shall be of brick or stone, and at least equal to half a brick in thickness; and every breast-back and with or partition of any chimney or flue hereafter to be built or rebuilt shall be built of sound materials, and the joints of the work well filled in with good mortar or cement, and rendered or stuccoed within; and also that every chimney or flue hereafter to be built or rebuilt in any wall, or of greater length than four feet out of the wall, not being a circular chimney or flue twelve inches in diameter, shall be in every section of the same not less than fourteen inches by nine inches; and no chimney or flue shall be constructed with any angle therein which shall be less obtuse than an angle of one hundred and twenty degrees, except as is hereinafter excepted; and every salient or projecting angle in any chimney or flue shall be rounded off four inches at the least, upon pain of forfeiture, by every master builder or other master workman who shall make or cause to be made such chimney or flue, of any sum of not less than ten pounds nor exceeding fifty pounds: Provided, nevertheless, that, notwithstanding this Act, chimneys or flues

(*a*) The provisions of this Act relating to the construction of chimneys and flues within the area affected by the Metropolitan Building Act, 1844, are repealed by sect. 1 of that Act, which is itself repealed by the Metropolitan Building Act, 1855. This latter Act is repealed by the Metropolitan Building

Act, 1894, which by sect. 64 prescribes "rules as to chimneys." The repeal of the Act of 1855 does not revive the provisions of this Act repealed by the Act of 1844: *Vide* the Interpretation Act, 1889, s. 11, sub-s. (1).

(*aa*) Words in brackets repealed by 37 & 38 Vict. c. 96.

may be built at angles with each other of ninety degrees and more, such chimneys or flues having therein proper doors or openings not less than six inches square.

7. All convictions for penalties for any offence against this Act may be had before two or more justices of the peace acting for the county, riding, city, borough, division, or place where the offence shall happen, or before the sheriff or steward of any county or stewartry in Scotland; and such penalties, and the costs and charges attending the recovery thereof, shall be levied by distress and sale of the goods and chattels of the offender or person liable or ordered to pay the same respectively, by warrant under the hands and seals of two or more of the said justices, or under the hand of any such sheriff or steward, rendering the overplus of such distress and sale (if any) to the party or parties, after deducting the charge of making the same, which warrant such justices or sheriffs or stewards are hereby empowered and required to grant, upon conviction of the offender by confession, or oath of one or more credible witness or witnesses; and the penalties, costs, and charges, when so levied, shall be paid, the one half to the informer, and the other half to the overseers or managers of the poor of the parish, township, or place where the offender shall dwell and inhabit, to be by such overseers or managers applied in aid of the rate or assessment raised for the relief of the poor of such parish, township, or place, and in Scotland, in parishes where there shall be no assessment for the relief of the poor, as the said managers shall direct, or to her Majesty in case there shall be no such overseer or manager.

Before whom convictions may be had. Penalties, how to be levied and applied.

8. The justices of the peace or sheriffs or stewards by whom any person shall be convicted and adjudged to pay any sum of money for any offence against this Act may adjudge that such person shall pay the same, together with costs, either immediately, or within such period as the said justices shall think fit; and, in default of payment at the time appointed, such person shall be imprisoned in the common gaol or house of correction (with or without hard labour), as to the said justices or sheriffs or stewards shall seem meet, for any time not exceeding two calendar months; the commitment to be determinable upon payment of the amount of the penalty and costs.

In default of payment of penalty the parties convicted to be sent to prison.

Section 9 repealed by 37 & 38 Vict. c. 96.

Section 10 repealed, except as to Ireland, by 55 & 56 Vict. c. 19.

11. That any person who shall think himself or herself aggrieved by any conviction by any justice or justices of the peace under this Act may appeal to the next court of general or quarter sessions of the peace . . . (b) and all judgments, determinations, and proceedings of such justices not appealed from as aforesaid, and of such sheriff or steward, or quarter sessions shall be final, and not subject to review by any process of law or court whatever, any law or usage to the contrary notwithstanding.

Appeal.

12. No conviction or adjudication made on appeal therefrom shall be quashed for want of form, or be removed by certiorari or otherwise into any

Conviction not to be

(b) The central part of this section was repealed as to England by Summary Jurisdiction Act, 1884. The procedure is now regulated by the Summary Juris-

diction Acts, 1879 (see sect. 31) and 1884 (see sect. 6). See also 55 & 56 Vict. c. 19, as to Ireland.

quashed for want of form. of her Majesty's superior courts of record: [and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same] (c).

27 & 28 VICT. c. 37 (1864).

An Act to amend and extend the Act for the Regulation of Chimney Sweepers.

General.

- Short titles. 1. This Act may be cited as "The Chimney Sweepers Regulation Act, 1864." "The Chimney Sweepers and Chimneys Regulation Act, 1840," and this Act may be cited together as "The Chimney Sweepers and Chimneys Regulation Acts, 1840 and 1864."
- [*Section 2. Commencement. Repealed 38 & 39 Vict. c. 66.*]
- Interpretation of terms. 3. In this Act—
The term "chimney sweeper" means a person using the trade or business of a chimney sweeper.
- This Act to be construed with principal Act. 4. This Act shall be construed together with the principal Act as one Act, and for this purpose the expression "this Act," when used in the principal Act, shall be taken to include the present Act.
- Application of penalties. 5. Any pecuniary penalty recovered under this Act shall be applied as directed in the principal Act.

Protection of Children and Young Persons.

- Restriction on employment of children under ten. 6. It shall not be lawful for a chimney sweeper to employ a child under the age of ten years to do or assist in doing any work or thing in or about the trade or business of such chimney sweeper, or the yard or building (if any) connected therewith.
- Chimney sweeper entering houses to sweep chimneys, &c. not to bring with him persons under sixteen. 7. It shall not be lawful for a chimney sweeper, on any occasion of his entering a house or building for the purpose of sweeping, cleaning, or coring a chimney or flue, therein or belonging thereto, or for extinguishing fire in any such chimney or flue, to cause or knowingly allow a person under the age of sixteen years in his employment or under his control to enter before, with, or after him into any part of such house or building, or to be therein for any part of the time during which such chimney sweeper himself continues therein for any such purpose as aforesaid.
- Penalties for before-named offences. 8. If any chimney sweeper acts in contravention of either of the foregoing enactments, he shall for every such offence be liable to a penalty not exceeding ten pounds.
- Power to justices to impose imprisonment. 9. Where under section two of the principal Act a chimney sweeper is convicted of the offence of compelling or knowingly allowing a person under

(c) Words in brackets apply to Ireland, but were repealed as to England by the Summary Jurisdiction Act, 1884. See sect. 39, sub-sect. (4), of the Summary Jurisdiction Act, 1879.

the age of twenty-one years to ascend or descend a chimney or enter a flue for any purpose in that section mentioned, the justices or sheriff before whom he is convicted may, in lieu of the imposition of any such pecuniary penalty as is authorized by that section, adjudge the offender to be imprisoned in the common gaol or house of correction for any term not exceeding six months, with or without hard labour.

10. In any prosecution of a chimney sweeper for any offence against the principal Act or against this Act, where the age of any young person or child comes in question, the proof of the age of such young person or child shall lie on the defendant.

Burden of proof of age to lie on chimney sweeper.

38 & 39 VICT. c. 70 (1875).

An Act for further amending the Law Relating to Chimney Sweepers.

Preliminary.

1. This Act may be cited as The Chimney Sweepers Act, 1875.

Short title.

[Section 2. Commencement. Repealed 56 & 57 Vict. c. 54.]

3. This Act shall not extend to Scotland.

Extent of Act.

4. In this Act—

Interpretation.

“Justice” means a justice of the peace or magistrate having jurisdiction in the county or place where the matter requiring the cognizance of a justice arises.

Certificates.

5. The chief officer of police in each police district, as defined in the schedule to this Act, may, subject to the provisions of this Act, issue a certificate authorizing the person therein named to carry on the business of a chimney sweeper in the district.

Certificate to be issued by police.

6. Every person who carries on the business of a chimney sweeper, and who employs any journeyman, assistant, or apprentice, shall take out a certificate as hereinafter mentioned.

Certificate for journeymen and others.

7. A person desirous of having a certificate for a district may apply for one to the chief officer of police for the district, by delivering the application at the police station for the district nearest to the applicant's dwelling-place.

Application for and issue of certificate.

The application shall be in the form given in the schedule to this Act, or to the like effect, and shall set forth the particulars therein indicated.

Thereupon a certificate shall be delivered to the applicant in the form given in the schedule to this Act, or to the like effect, signed by the chief officer of police.

8. Where two or more persons carry on the business of a chimney sweeper in partnership, it shall be sufficient for them to have one certificate for all the partners, and the forms given in the schedule to this Act may be altered accordingly.

Certificate for partners.

9. Notwithstanding anything in this Act, it shall not be necessary for a person who carries on the business of a chimney sweeper, in the capacity only of a journeyman or of assistant to a master chimney sweeper, to have

Journeyman and assistant exempted.

a certificate: Provided, that such journeyman or assistant does not employ in chimney sweeping any other person as his paid assistant or as his apprentice.

Fee on certificate.

10. Every person to whom a certificate is issued shall on the issue thereof pay a fee of two shillings and sixpence.

The fees received shall be applied as penalties under this Act are applicable.

But see now Chimney Sweepers Act, 1894, s. 2.

Duration of certificate.

11. Every certificate shall be dated the day of issue, and shall be in force for one year from its date, and no longer.

Uniform period for certificates.

12. One of her Majesty's principal Secretaries of State may, if he thinks fit, direct that all certificates be made to expire yearly on the same day.

If he does so, he shall provide—

(1) In the case of a certificate issued for less than a year, for apportionment of the fee payable thereon:

(2) For the issue of a certificate instead of a certificate lost or destroyed, and apportionment of the fee payable thereon.

Endorsing certificate when chimney sweeper desires to carry on business in another district.

13. The holder of a certificate for one district, who is desirous of carrying on the business of a chimney sweeper in any other district, may forward his certificate to the chief officer of police for such other district for endorsement; and such chief officer shall thereupon endorse and return it without charging any fee, and a certificate so endorsed shall be of the same validity for such last-mentioned district as if it had been originally issued for the same district.

Register of certificates.

14. Each chief officer of police shall keep a register of the certificates issued or endorsed by him.

It shall be in such form and shall show such particulars as one of her Majesty's principal Secretaries of State from time to time directs, and every such register shall be presumed to be in conformity with such directions until the contrary is shown.

An entry in it, and a copy of such an entry purporting to be certified as a true copy by the chief officer of police, and a statement purporting to be signed by the chief officer of the absence of such an entry in any case, shall be evidence of the matters therein appearing.

Offences.

Penalty for acting as chimney sweeper without certificate.

15. Every person who carries on such trade or business of chimney sweeper as is hereinbefore specified without having such certificate shall be guilty of an offence against this Act, and shall, on conviction thereof in a court of summary jurisdiction, be liable for the first offence to a penalty not exceeding ten shillings, and for every subsequent offence to a penalty not exceeding twenty shillings.

Obligation to give name and address.

16. Every person carrying on the business of such chimney sweeper as aforesaid shall, when required by any person for whom he acts or offers to act as a chimney sweeper, or by any justice, or constable or peace officer, give his name and address.

If any such person fails so to do, or gives a false name or false address, he shall be guilty of an offence against this Act, and shall, on conviction thereof in a court of summary jurisdiction, be liable to a penalty not exceeding ten shillings.

17. Where such person carries on the business of a chimney sweeper as aforesaid, he shall, on demand, produce and show his certificate (if any) to any person for whom he acts or offers to act as a chimney sweeper, and to any justice, or constable or peace officer, and allow it to be read and copied by the person to whom it is produced. Production of certificate on demand.

If he fails to do so he shall be guilty of an offence against this Act, and shall, on conviction thereof in a court of summary jurisdiction, be liable for the first offence to a penalty not exceeding ten shillings, and for every subsequent offence to a penalty not exceeding twenty shillings.

18. It shall not be lawful for a person having a certificate to lend or transfer it to another. Certificate not to be assigned.

It shall not be lawful for any person to borrow, accept, or use a certificate issued to another.

If any person acts in contravention of this section he shall be guilty of an offence against this Act, and shall for every such offence, on conviction thereof in a court of summary jurisdiction, be liable to a penalty not exceeding twenty shillings.

19. If any person does any of the following things he shall be guilty of an offence against this Act : Penalty for false representations, &c.

- (1) If he makes, or procures to be made, or aids in making, a false statement or representation, knowing it to be false, in any application for a certificate :
- (2) If he fabricates, or counterfeits, or alters, or procures to be fabricated, or counterfeited, or altered, or aids in fabricating, or counterfeiting, or altering a certificate :
- (3) If he carries, produces, or shows, a fabricated, or counterfeited, or altered certificate, knowing it to be such :

and every person so offending shall, on conviction thereof in a court of summary jurisdiction, be liable for the first offence to a penalty not exceeding forty shillings, and for every subsequent offence to the like penalty, with or without imprisonment for a term not exceeding six months, with or without hard labour, or to such imprisonment alone, with or without hard labour.

20. If any person having a certificate is convicted of an offence against the Chimney Sweepers and Chimneys Regulation Acts, 1840 and 1864, or either of them, the court or justice before whom he is convicted may, if it seems fit, deprive him of his certificate for the residue of the current year ; and if any person not having a certificate is convicted of an offence against the Chimney Sweepers and Chimneys Regulation Acts, 1840 and 1864, or either of them, the court or justice before whom he is convicted may, if it thinks fit, in addition to imposing any other penalty which it may be authorized to impose, declare him disqualified to hold any certificate under this Act for any term not exceeding one year ; but such deprivation or disqualification shall be suspended pending any appeal under section eleven of Deprivation of certificate on conviction under former Acts.

the Chimney Sweepers and Chimneys Regulation Act, 1840, and shall be in the discretion of the Court of Appeal in case the conviction is confirmed.

Duty of
police to en-
force former
Acts.

21. The chief officer of police shall enforce and put in execution the Chimney Sweepers and Chimneys Regulation Acts, 1840 and 1861, without prejudice to the right of any other person to institute proceedings thereunder.

Ireland.

22. In Ireland the Lord-Lieutenant shall have power and authority under this Act in lieu of one of her Majesty's Principal Secretaries of State.

23. Penalties recovered in Ireland shall be applied according to the Fines Act (Ireland), 1851, or any Act amending the same.

Savings.

Saving for
vagrant Act.

24. A person shall not be exempt from the provisions of any Act relating to idle or disorderly persons, or to rogues or vagabonds, by reason only that he has a certificate under this Act, or assists or accompanies a person having such a certificate.

Saving for
local Acts
and local
authorities.

25. Nothing in this Act shall interfere with the operation of any other Act in force in any city, town, or other place, or take away or abridge any power vested in any local authority by any general or local Act.

THE SCHEDULE.

PART I.

POLICE DISTRICTS AND OFFICERS.

Police District.	Chief Officer of Police.
<i>In England.</i>	
The City of London, and the liberties thereof, exclusive of Southwark.	The Commissioner of Police of the City.
The Metropolitan Police District.	The Commissioner of Police of the Metropolis.
Any county, any riding, parts, division, or liberty of a county, any borough, or town maintaining a separate police force.	The chief constable or head constable, or other officer, by whatever name called, having the chief command of the police in the district.
<i>In Ireland.</i>	
The police district of Dublin metropolis.	Either of the Commissioners of Police for the district.
Any district, whether city, town, or county, over which is appointed a sub-inspector of the Royal Irish Constabulary.	The sub-inspector.

All the police under one chief constable constitute one police force for the purposes of this schedule.

PART II.

(Repealed by Statute Law Revision Act (No. 2), 1893.)

PART III.

FORMS.

(A.)—*Application for Certificate.*

I *A. B.* [*names of applicant in full*] of [*dwelling place*] hereby apply for a certificate under the Chimney Sweepers Act, 1875, to authorise me to act as a chimney sweeper within police district; and I declare that the following statement is true and correct:

Names of all Apprentices and others in my Employment.	Ages of those under 21.	Date and Term of Apprenticeship.
<i>A. B.</i> Apprentice	1718 .
<i>C. D.</i> Journeyman		[] years.
<i>E. F.</i>		

Dated this day of , 18 .

(Signed) *A. B.*(B.)—*Certificate.*

In pursuance of the Chimney Sweepers Act, 1875, I hereby certify that *A. B.* [*names of applicant in full*] of , in the county of , is authorised to carry on the business of a chimney sweeper within the police district for one year, reckoned from the date of this certificate.

Dated the day of , 18 .

(Signed) *C. D.*,
Police Officer.

57 & 58 VICT. c. 51 (1894).

An Act to make better provision for the Regulation of Chimney Sweepers.

Penalty for
the knocking
or ringing
bells.

1. Any person who shall for the purpose of soliciting employment as a chimney sweep knock at the houses from door to door, or ring a bell, or use any noisy instrument, or to the annoyance of any inhabitant thereof ring the door-bell of any house, or cause anyone to do any of the acts aforesaid, shall be liable on summary conviction to a penalty not exceeding ten shillings for the first offence, and to a penalty not exceeding twenty shillings for every subsequent offence.

Application of
fees.
38 & 39 Vict.
c. 70.

2. All fees received under the Chimney Sweepers Act, 1875, in England shall be paid to the pension fund of the police force of the police district in which the certificate under the said Act was issued.

Short title and
construction.

3. This Act may be cited as "The Chimney Sweepers Act, 1894," and shall be read as one with the Chimney Sweepers Act, 1875.

Extent of Act.

4. This Act shall not apply to Scotland.

Commence-
ment of Act.

5. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-five.

CHAPTER VI.

LABOUR IN MINES.

THE chief Acts dealing with this subject are the Coal Mines Regulation Act, 1887, amended by the Acts of 1894, 1896, 1903, and 1905; the Metalliferous Mines Regulation Acts, 1872 and 1875; the Quarries Act, 1894; and the Mines (Prohibition of Child Labour Underground) Act, 1900.

The main object of this legislation is similar to that of the Factory and Workshop Acts, *viz.*, to protect persons engaged in mining from dangers incident to their occupation.

The principal differences between the Coal Mines Regulation Act of 1872 and that of 1887, which replaces it, are these:—

- (1) The age, under which underground employment of boys is prohibited, is raised from ten to twelve; and is now raised to thirteen by the Mines (Prohibition of Child Labour Underground) Act, 1900 (63 & 64 Vict. c. 21);
- (2) Further provisions as to (i) the inspection of mines, (ii) the use of explosives therein, (iii) the qualification of a miner (sect. 49, rr. 38, 12, 39);
- (3) Some changes in the check-weighing clauses (*a*);
- (4) The sections as to education of children in employment are omitted, this subject being dealt with by the Elementary Education Acts. (See pp. 450 *et seq.*, *infra*.)

35 & 36 VICT. c. 77 (1872).

An Act to consolidate and amend the Law relating to Metalliferous Mines.

Preliminary.

1. This Act may be cited as “The Metalliferous Mines Regulation Act. Short title, 1872.”

Section 2. *Commencement.*—*Repealed.*

(*a*) These are discussed *infra* in the notes on sects. 12 *et seq.*

Application
of Act.

3. This Act shall apply to every mine (*b*) of whatever description other than a mine to which the Coal Mines Regulation Act, 1872, applies.

PART I.

Employment of Women, Young Persons, and Children.

Employment
of women
and children.

4. No boy under the age of twelve years (*c*), and no girl or woman of any age, shall be employed in or allowed to be for the purpose of employment in any mine to which this Act applies below ground.

Hours of em-
ployment of
male young
persons.

5. A male young person of the age of thirteen and under the age of sixteen years shall not be employed in or allowed to be for the purpose of employment in any mine to which this Act applies below ground for more than fifty-four hours in any one week, or more than ten hours in any one day, or otherwise than in accordance with the regulations following; that is to say,

- (1) There shall be allowed an interval of not less than eight hours between the period of employment on Friday and the period of employment on the following Saturday, and in other cases of not less than twelve hours between each period of employment; provided always, that in the case of young male persons whose employment is at such distance from their ordinary place of residence that they do not return there during the intervals of labour, and who are not employed during more than forty hours in any week, an interval of not less than eight hours shall be allowed between each period of employment;
- (2) The period of each employment shall be deemed to begin at the time of leaving the surface, and to end at the time of returning to the surface;
- (3) A week shall be deemed to begin at midnight on Saturday night, and to end at midnight on the succeeding Saturday night.

Register to be
kept by owner,
&c., of boys
and male
young persons
employed in
mines.

6. The owner (*d*) or agent of every mine to which this Act applies shall keep in the office at the mine, or in the principal office of the mine belonging to the same owner in the district in which the mine is situated, a register, and shall cause to be entered in such register the name, age, residence, and date of first employment of [*all boys of the age of twelve and under the age of thirteen years (c), and of*] all male young persons of the age of thirteen and under the age of sixteen years who are employed in the mine below ground, and of all women, young persons, and children employed above ground in

(*b*) See sect. 3 of Mines (Coal) Regulation Act, 1887. A slate quarry worked by means of underground workings and levels, within the Act: *Sim v. Evans* (1875), 23 W. R. 730. See as to difference between "mine" and "quarry," and the meaning of "minerals," *Bell v. Wilson* (1865), 35 L. J. Ch. 337; and, on appeal, L. R. 1 Ch. 303; *Att.-Gen. of Isle of Man v. Mylchreest* (1879), 4 A. C. 294; *Lord Provost of Glasgow v. Farie* (1888), 13 A. C. 657; *Midland Rail. Co. v. Robinson* (1889), 15 A. C.

19; *In re an Arbitration between Todd, Birlestone & Co. and the North Eastern Rail. Co.*, [1903] 1 K. B. 603. See Quarries Act, 1894, ss. 1, 2, *infra*.

(*c*) The age is raised to thirteen by the Mines (Prohibition of Child Labour Underground) Act, 1900; so that no "boy" may now be employed underground—only "male young persons" and adults.

(*d*) See sect. 41. "Owner" does not, as in the Coal Mines Act (s. 75), include a contractor.

connexion with a mine, and shall produce such register to any inspector under this Act at the mine at all reasonable times when required by him, and allow him to inspect and copy the same.

The immediate employer of every [*boy or*] male young person of the ages aforesaid, other than the owner or agent of the mine, before he causes such [*boy or*] male young person to be in any mine to which this Act applies below ground, shall report to the owner or agent of such mine, or some person appointed by such owner or agent, that he is about to employ him in such mine.

The words in italics no longer apply : see note (e) on sect. 4, *supra*.

7. Where there is a shaft (*e*), inclined plane, or level in any mine to which this Act applies, whether for the purpose of an entrance to such mine or of a communication from one part to another part of such mine, and persons are taken up, down or along such shaft, plane, or level by means of any engine, windlass, or gin, driven or worked by steam or any mechanical power, or by an animal, or by manual labour, a person shall not be allowed to have charge of such engine, windlass, or gin, or of any part of the machinery, ropes, chains, or tackle connected therewith, unless he is a male of at least eighteen years of age.

As to employment of young persons under eighteen in connexion with engines.

Where the engine, windlass, or gin is worked by an animal, the person under whose direction the driver of the animal acts shall, for the purposes of this section, be deemed to be the person in charge of the engine, windlass, or gin, but such driver shall not be under twelve years of age.

8. If any person contravenes or fails to comply with any provision of this Act with respect to the employment of women, girls, young persons, or boys, or to the register of or report respecting boys and male young persons, or to the employment of persons about any engine, windlass, or gin, he shall be guilty of an offence against this Act; and in case of any such contravention or non-compliance by any person whomsoever in the case of any mine, the owner and agent of such mine shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means by publishing and to the best of his power enforcing the provisions of this Act to prevent such contravention or non-compliance.

Penalty for employment of persons contrary to this Act.

If it appear that a boy or young person or a person employed about an engine, windlass, or gin, was employed on the representation of his parent or guardian that he was of that age at which his employment would not be in contravention of this Act, and under the belief in good faith that he was of that age, the owner or agent of the mine and the immediate employer shall be exempted from any penalty, and the parent or guardian shall, for such misrepresentation, be deemed guilty of an offence against this Act.

Wages.

9. No wages shall be paid to any person employed in or about any mine to which this Act applies at or within any public house, beer shop, or place for the sale of any spirits, wine, beer, cyder, or other spirituous or fermented

Prohibition of payment of wages at public-houses, &c.

(e) See sect. 41.

liquor, or other house of entertainment, or any office, garden, or place belonging or contiguous thereto, or occupied therewith.

Every person who contravenes or fails to comply with, or permits any person to contravene or fail to comply with, this section shall be guilty of an offence against this Act, and in the event of any such contravention or non-compliance in the case of any mine by any person whomsoever the owner and agent (*f*) of such mine shall each be guilty of an offence against this Act, unless he prove that he had taken all reasonable means by publishing and to the best of his power enforcing the provisions of this section to prevent such contravention or non-compliance.

See p. 126, *supra*.

Returns, Notices, and Abandonment.

10. [*Repealed by 38 & 39 Vict. c. 39, s. 1.*] See p. 383, *infra*.

Notice of accidents in mines to be sent to inspector.

11. Where in or about any mine to which this Act applies, whether above or below ground, any accident occurs which either—

- (i) causes loss of life to any person employed in or about the mine; or
- (ii) causes any fracture of the head or of any limb, or any dislocation of a limb, or any other serious personal injury to any person employed in or about the mine; or
- (iii) is caused by any explosion of gas or coal dust, or any explosive, or by electricity or by overwinding, or by any other such special cause as the Secretary of State specifies by order, and causes any personal injury whatever to any person employed in or about the mine,

the owner or agent of the mine shall forthwith send notice in writing of the accident, and of any loss of life or personal injury caused thereby, to the inspector of the district in such form and accompanied by such particulars as the Secretary of State prescribes (*ff*).

Where any personal injury, of which notice is required to be sent under this section, results in the death of the person injured, notice in writing of the death shall be sent to the inspector of the district on behalf of a Secretary of State within twenty-four hours after such death comes to the knowledge of the owner or agent.

Every owner or agent who fails to act in compliance with this section shall be guilty of an offence against this Act.

For "penalties," see p. 378, *infra*.

The Notice of Accidents Act, 1894 (*vide* sect. 6), does not apply to mines. (See p. 435, *infra*.)

Notice of opening and abandonment of mine to be given to inspector.

12. In any of the following cases, namely,

- (1) Where any working is commenced for the purpose of opening a new shaft for any mine to which this Act applies;

(*f*) In sect. 11 of Coal Mines Regulation Act, 1887, "owner, agent and manager."

See note there.

(*ff*) Down to this point this section is new by virtue of the Notice of Accidents Act, 1906, s. 2 (printed at p. 859, *infra*), which repeals the original provisions and substitutes those given above. And see sect. 5 of that Act, as to notice of "dangerous occurrences," and sect. 3 as to notice of accidents on mine railway sidings.

- (2) Where a shaft of any mine to which this Act applies is abandoned or the working thereof discontinued ;
- (3) Where the working of a shaft of any mine to which this Act applies is recommenced after any abandonment or discontinuance for a period exceeding two months ; or
- (4) Where any change occurs in the name of, or in the name of the owner or agent of, a mine to which this Act applies, or in the officers of any incorporated company which is the owner of a mine to which this Act applies ;

the owner or agent of such mine shall give notice thereof to the inspector of the district within two months after such commencement, abandonment, discontinuance, recommencement, or change, and if such notice is not given, the owner or agent shall be guilty of an offence against this Act.

Provided that—

- (1) This section shall apply only to any working or mine in which more than twelve persons are ordinarily employed below ground ; and
- (2) In the case of a partnership working a mine within the stannaries of Devon and Cornwall, if notice of every change in the purser of the partnership is sent as required by this section, notice of a change in the members of such partnership need not be sent in pursuance of this section.

13. Where any mine to which this Act applies is abandoned or the working thereof discontinued, at whatever time such abandonment or discontinuance occurred, the owner thereof, and every other person interested in the minerals of the mine, shall cause the top of the shaft and any side entrance from the surface to be and to be kept securely fenced for the prevention of accidents.

Fencing of
abandoned
mine.

Provided that—

- (1) Subject to any contract to the contrary, the owner of the mine shall, as between him and any other person interested in the minerals of the mine, be liable to carry into effect this section, and to pay any costs incurred by any other person interested in the minerals of the mine in carrying this section into effect :
- (2) Where such abandonment or discontinuance has occurred in the case of a mine before the passing of this Act, this section shall apply only to such shaft or side entrance of the mine as is situate within fifty yards of any highway, road, footpath, or place of public resort, or in open or unenclosed land, or not being situate as aforesaid, is required by an inspector in writing to be fenced, on the ground that it is specially dangerous :
- (3) Nothing in this section shall exempt any person from any liability under any other Act, or otherwise.

If any person fail to act in conformity with this section he shall be guilty of an offence against this Act.

Any shaft or side entrance which is not fenced as required by this section, and is within fifty yards of any highway, road, footpath, or place of public resort, or is in open or unenclosed land, or is required by an inspector as aforesaid to be fenced, shall be deemed to be a nuisance within the meaning

of section 8 of the Nuisances Removal Act for England, 1855, as amended and extended by the Sanitary Act, 1866 (*g*).

This section applies to mines abandoned before the Act came into operation: *Stott v. Dickinson* (1876), 34 L. T. (N. S.) 291.

The owners of mines and minerals demised them for a term of years subject to rent or royalties; they had a lien upon the minerals raised for such rent; lessees ceased working the mine, and allowed it to remain insufficiently fenced: *Held*, that though the lease was still in operation, the owners were liable: *Evans v. Mostyn* (1877), 2 C. P. D. 547.

A wall surrounding an enclosed space, within which, at a distance of forty-five yards from the wall, is the side entrance of a disused mine, is not sufficient; the entrance itself must be fenced: *Foster v. Owen* (1892), 62 L. J. M. C. 7; *Kneeky v. Redruth Rural District Council*, [1904] 1 K. B. 382; see note on definition of "owner," sect. 41, *infra*.

Plans of abandoned mines to be sent to Secretary of State.

14. Where any mine to which this Act applies in which more than twelve persons have ordinarily been employed below ground is abandoned, the owner of such mine at the time of the abandonment shall, within three months after such abandonment, send to a Secretary of State an accurate plan, on a scale of not less than a scale of two chains to one inch, or on such other scale as the plan last used in the mine is constructed on, showing the boundaries of the workings of such mine up to the time of the abandonment, with the view of its being preserved under the care of the Secretary of State; but no person other than an inspector shall be at liberty to inspect or to copy such plan within ten years of its receipt by the Secretary of State without the license of such Secretary of State.

Every person who fails to comply with this section shall be guilty of an offence against this Act.

Inspection.

Appointment of inspectors of mines.

15. A Secretary of State may from time to time appoint any fit persons to be inspectors of mines to which this Act applies, and assign them their duties, and may award them such salaries as the Commissioners of Her Majesty's Treasury may approve, and may remove such inspectors.

Notice of the appointment of every such inspector shall be published in the London Gazette.

Any such inspector is referred to in this Act as an inspector, and the inspector of a district means the inspector who is for the time being assigned to the district or portion of the United Kingdom with reference to which the term is used.

Any person appointed or acting as inspector under the Coal Mines Regulation Act, 1887, if directed by a Secretary of State to act as an inspector under this Act may so act and shall be deemed to be an inspector under this Act.

Disqualification of persons as inspectors.

16. Any person who practises or acts or is a partner of any person who practises or acts as a land agent or mining engineer, or as a manager, viewer, agent, or valuer of mines, or arbitrator in any differences arising between owners, agents, or managers of mines, or is otherwise employed in or about any mine (whether such mine is one to which this Act applies or not), shall not act as an inspector of mines under this Act.

(*g*) Both Acts superseded by Public Health Act, 1875: see sects. 91 and 313, and Sched. V., Pt. I.

17. An inspector under this Act shall have power to do all or any of the following things; namely, Powers of inspectors.

- (1) To make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act relating to matters above ground or below ground are complied with in the case of any mine to which this Act applies:
- (2) To enter, inspect, and examine any mine to which this Act applies, and every part thereof, at all reasonable times by day and night, but so as not to impede or obstruct the working of the said mine:
- (3) To examine into and make inquiry respecting the state and condition of any mine to which this Act applies, or any part thereof, and the ventilation of the mine, and the sufficiency of the special rules (if any) for the time being in force in the mine, and all matters and things connected with or relating to the safety of the persons employed in or about the mine or any mine contiguous thereto:
- (4) To exercise such other powers as may be necessary for carrying this Act into effect.

Every person who wilfully obstructs any inspector in the execution of his duty under this Act, and every owner and agent of a mine who refuses or neglects to furnish to the inspector the means necessary for making any entry, inspection, examination or inquiry under this Act in relation to such mine, shall be guilty of an offence against this Act.

18. If in any respect (which is not provided against by any express provision of this Act, or by any special rule) any inspector find any mine to which this Act applies, or any part thereof, or any matter, thing, or practice in or connected with any such mine, to be dangerous or defective, so as in his opinion to threaten or tend to the bodily injury of any person, such inspector may give notice in writing thereof to the owner or agent of the mine, and shall state in such notice the particulars in which he considers such mine, or any part thereof, or any matter, thing, or practice, to be dangerous or defective, and require the same to be remedied; and unless the same be forthwith remedied the inspector shall also report the same to a Secretary of State.

Notice to be given by inspectors of causes of danger not provided for by the rules.

If the owner or agent of the mine objects to remedy the matter complained of in the notice, he may, within twenty days after the receipt of such notice, send his objection in writing, stating the grounds thereof, to a Secretary of State; and thereupon the matter shall be determined by arbitration in manner provided by this Act; and the date of the receipt of such objection shall be deemed to be the date of the reference.

If the owner or agent fail to comply either with the requisition of the notice, where no objection is sent within the time aforesaid, or with the award made on arbitration, within twenty days after the expiration of the time for objection or the time of making of the award (as the case may be) he shall be guilty of an offence against this Act, and the notice and award shall respectively be deemed to be written notice of such offence.

Provided that the Court, if satisfied that the owner or agent has taken active measures for complying with the notice or award, but has not, with reasonable diligence, been able to complete the works, may adjourn any

proceedings taken before them for punishing such offence, and, if the works are completed within a reasonable time, no penalty shall be inflicted.

No person shall be precluded by any agreement from doing such acts as may be necessary to comply with the provisions of this section, or be liable under any contract to any penalty or forfeiture for doing such acts.

Plans of mines
to be kept.

19. The owner or agent of every mine to which this Act applies shall keep in the office at the mine, or in the principal office of the mines belonging to the same owner in the district in which the mine is situated, an accurate plan of the workings of such mine, showing the workings up to at least six months previously, other than workings which were last discontinued at a date more than twelve months before the commencement of this Act.

The owner or agent of the mine shall produce to an inspector under this Act, at one of the aforesaid offices, such plan, and shall, if requested by the inspector, mark on such plan the progress of the workings of the mine up to the time of such production, and shall allow the inspector to examine the same.

If the owner or agent of any mine fails to keep such plan as is prescribed by this section, or wilfully refuses to produce or allow to be examined such plan, or wilfully withholds any portion of any plan, or conceals any part of the workings of his mine, or produces an imperfect or inaccurate plan, unless he shows that he was ignorant of such concealment, imperfection, or inaccuracy, he shall be guilty of an offence against this Act; and, further, the inspector may, by notice in writing (whether a penalty for such offence has or has not been inflicted), require the owner or agent to cause an accurate plan, such as is prescribed by this section, to be made within a reasonable time, at the expense of the owner of the mine, on a scale of not less than a scale of two chains to one inch, or on such other scale as the plan used in the mine is constructed on.

If the owner or agent fails within twenty days, or such further time as may be shown to be necessary, after the requisition of the inspector, to make or cause to be made such plan, he shall be guilty of an offence against this Act.

Provided that this section shall apply only to a mine to which this Act applies, and in which more than twelve persons are ordinarily employed below ground.

Inspector to
make an
annual report
and special
report when
directed.

20. Every inspector under this Act shall make an annual report of his proceedings during the preceding year to a Secretary of State, which report shall be laid before both Houses of Parliament.

A Secretary of State may at any time direct an inspector to make a special report with respect to any accident in a mine to which this Act applies, which accident has caused loss of life or personal injury to any person, and in such case shall cause such report to be made public at such time and in such manner as he thinks expedient.

Arbitration.

Provisions as
to arbitration.

21. With respect to arbitrations under this Act, the following provisions shall have effect:

(1) The parties to the arbitration are in this section deemed to be the

owner or agent of the mine on the one hand, and an inspector of mines on behalf of the Secretary of State on the other :

- (2) Each of the parties to the arbitration may, within twenty-one days after the date of the reference, appoint an arbitrator :
- (3) No person shall act as arbitrator or umpire under this Act who is employed in, or in the management of, or is interested in the mine to which the arbitration relates :
- (4) The appointment of an arbitrator under this section shall be in writing, and notice of the appointment shall be forthwith sent to the other party to the arbitration, and shall not be revoked without the consent of such other party :
- (5) The death, removal, or other change in any of the parties to the arbitration shall not affect the proceedings under this section :
- (6) If within the said twenty-one days either of the parties fail to appoint an arbitrator, the arbitrator appointed by the other party may proceed to hear and determine the matter in difference, and in such case the award of the single arbitrator shall be final :
- (7) If before an award has been made any arbitrator appointed by either party die or become incapable to act, or for fourteen days refuse or neglect to act, the party by whom such arbitrator was appointed may appoint some other person to act in his place ; and if he fail to do so within fourteen days after notice in writing from the other party for that purpose, the remaining arbitrator may proceed to hear and determine the matters in difference, and in such case the award of such single arbitrator shall be final :
- (8) In either of the foregoing cases where an arbitrator is empowered to act singly, upon one of the parties failing to appoint, the party so failing may, before the single arbitrator has actually proceeded in the arbitration, appoint an arbitrator, who shall then act as if no failure had been made :
- (9) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as may have been appointed for that purpose by both arbitrators under their hands, the matter in difference shall be determined by the umpire appointed as herein-after mentioned :
- (10) The arbitrators, before they enter upon the matters referred to them, shall appoint by writing under their hands an umpire to decide on points on which they may differ :
- (11) If the umpire die or become incapable to act before he has made his award, or refuses to make his award within a reasonable time after the matter has been brought within his cognizance, the persons or person who appointed such umpire shall forthwith appoint another umpire in his place :
- (12) If the arbitrators fail or refuse or for seven days after the request of either party neglect to appoint an umpire, then on the application of either party an umpire shall be appointed by the chairman of the general or quarter sessions of the peace within the jurisdiction of which the mine is situate :

- (13) The decision of every umpire on the matters referred to him shall be final :
- (14) If a single arbitrator fail to make his award within twenty-one days after the day on which he was appointed, the party who appointed him may appoint another arbitrator to act in his place :
- (15) The arbitrators and their umpire, or any of them, may examine the parties and their witnesses on oath, they may also consult any counsel, engineer, or scientific person whom they may think it expedient to consult :
- (16) The payment, if any, to be made to any arbitrator or umpire for his services shall be fixed by the Secretary of State, and together with the costs of the arbitration and award shall be paid by the parties or one of them according as the award may direct. Such costs may be taxed by a master of one of the superior courts, who, on the written application of either of the parties, shall ascertain and certify the proper amount of such costs. The amount, if any, payable by the Secretary of State shall be paid as part of the expenses of inspectors under this Act. The amount, if any, payable by the owner or agent may in the event of non-payment be recovered in the same manner as penalties under this Act :
- (17) Every person who is appointed an arbitrator or umpire under this section shall be a practical mining engineer, or a person accustomed to the working of mines, but when an award has been made under this section the arbitrator or umpire who made the same shall be deemed to have been duly qualified as provided by this section.

Coroners.

Provisions as to coroners' inquests on deaths from accidents in mines.

22. With respect to coroners' inquests on the bodies of persons whose death may have been caused by explosions or accidents in mines to which this Act applies, the following provisions shall have effect :

- (1) Where a coroner holds an inquest upon a body of any person whose death may have been caused by any explosion or accident, of which notice is required by this Act to be given to the inspector of the district, the coroner shall adjourn such inquest unless an inspector, or some person on behalf of a Secretary of State, is present to watch the proceedings :
- (2) The coroner, at least four days before holding the adjourned inquest, shall send to the inspector of the district notice in writing of the time and place of holding the adjourned inquest :
- (3) The coroner, before the adjournment, may take evidence to identify the body, and may order the interment thereof :
- (4) If an explosion or accident has not occasioned the death of more than one person, and the coroner has sent to the inspector of the district notice of the time and place of holding the inquest not less than forty-eight hours before the time of holding the same, it shall not be imperative on him to adjourn such inquest in pursuance of this section, if the majority of the jury think it unnecessary so to adjourn :

- (5) An inspector shall be at liberty at any such inquest to examine any witness, subject nevertheless to the order of the coroner:
- (6) Where evidence is given at an inquest at which an inspector is not present of any neglect as having caused or contributed to the explosion or accident, or of any defect in or about the mine appearing to the coroner or jury to require a remedy, the coroner shall send to the inspector of the district notice in writing of such neglect or default:
- (7) Any person having a personal interest in or employed in or in the management of the mine in which the explosion or accident occurred shall not be qualified to serve on the jury empannelled on the inquest; and it shall be the duty of the constable or other officer not to summon any person disqualified under this provision, and it shall be the duty of the coroner not to allow any such person to be sworn or to sit on the jury.

Every person who fails to comply with the provisions of this section shall be guilty of an offence against this Act.

PART II.

RULES.

General Rules.

23. The following general rules shall, so far as may be reasonably practicable (*h*), be observed in every mine to which this Act applies : General rules.

(1) An adequate amount of ventilation shall be constantly produced in every mine to such an extent that the shafts, winzes, sumps, levels, underground stables, and working places of such mine, and the travelling roads to and from such working places, shall be in a fit state for working and passing therein. Ventilation.

See note on General Rule (1), sect. 49, Coal Mines Regulation Act, 1887, *infra*.

(2) Gunpowder or other explosive or inflammable substance shall only be used underground in the mine as follows :

- (a) It shall not be stored in the mine :
- (b) It shall not be taken into the mine, except in a case (*i*) or canister containing not more than four pounds :
- (c) A workman shall not have in use at one time in any one place more than one of such cases or canisters :

(*h*) See note on same words in sect. 49 of Coal Mines Regulation Act, 1887, *infra*.

(*i*) “ ‘Case’ must mean a case in the nature of a canister . . . a solid sub-

stantial thing of wood or metal or some other such solid substance;” a bag is not sufficient: *Foster v. Diphwys Casson Slate Co.* (1887), 18 Q. B. D. 428.

(d) In charging holes for blasting, except in mines excepted from the operation of this section by the Secretary of State, an iron or steel pricker shall not be used, and a person shall not have in his possession in the mine underground any iron or steel pricker, and an iron or steel tamping rod or stemmer shall not be used for ramming either the wadding or the first part of the tamping or stemming on the powder:

(e) A charge of powder which has missed fire shall not be unrammed.

(3) Every underground plane on which persons travel, which is self-acting, or worked by an engine, windlass, or gin, shall be provided (if exceeding thirty yards in length) with some proper means of signalling between the stopping places and the ends of the plane, and shall be provided in every case, at intervals of not more than twenty yards, with sufficient man-holes for places of refuge.

(4) Every road on which persons travel underground, where the produce of the mine in transit exceeds ten tons in any one hour over any part thereof, and where the load is drawn by a horse or other animal, shall be provided, at intervals of not more than one hundred yards, with sufficient spaces for places of refuge, each of which spaces shall be of sufficient length, and of at least three feet in width between the waggons running on the tramroad and the side of the road; and the Secretary of State may, if he see fit, require the inspector to certify whether the produce of the mine in transit on the road aforesaid does or does not ordinarily exceed the weight as aforesaid.

(5) Every man-hole and space for a place of refuge shall be constantly kept clear, and no person shall place anything in a man-hole or such space so as to prevent access thereto.

(6) The top of every shaft which was opened before the commencement of the actual working for the time being of the mine, and has not been used during such actual working, shall, if so required in writing by the inspector of the district, be securely fenced, and the top of every other shaft which for the time being is out of use, or used only as an air shaft, shall be securely fenced.

(7) The top and all entrances between the top and bottom of every working or pumping shaft shall be properly fenced, but this shall not be taken to forbid the temporary removal of the fence for the purpose of repairs or other operations, if proper precautions are used.

(8) Where the natural strata are not safe, every working or pumping shaft shall be securely cased, lined, or otherwise made secure.

(9) Where one portion of a shaft is used for the ascent and descent of persons by ladders or a man-engine, and another portion of the same shaft is used for raising the material gotten in the mine, the first-mentioned portion shall be cased or otherwise securely fenced off from the last-mentioned portion.

(10) Every working shaft (*j*) in which persons are raised shall, if exceeding fifty yards in depth, and not exempted in writing by the inspector of

(*j*) This term includes a shaft from which a tunnel is being driven, though no ore is yet being got: *Foster v. North Hendré Mining Co.*, [1891] 1 Q. B. 71.

the district, be provided with guides and some proper means of communicating distinct and definite signals from the bottom of the shaft and from every entrance for the time being in work between the surface and the bottom of the shaft to the surface, and from the surface to the bottom of the shaft and to every entrance for the time being in work between the surface and the bottom of the shaft.

(11) A sufficient cover overhead shall be used when lowering or raising persons in every working shaft, except where it is worked by a windlass, or where the person is employed about the pump or some work of repair in the shaft, or where a written exemption is given by the inspector of the district.

Miners improperly using an uncovered skip for ascension to the surface were held guilty of an offence against this rule: *Frecheville v. Souden* (1883), 48 L. T. (N. S.) 612.

(12) A single linked chain shall not be used for lowering or raising persons in any working shaft or plane except for the short coupling chain attached to the cage or load.

(13) There shall be on the drum of every machine used for lowering or raising persons such flanges or horns, and also, if the drum is conical, such other appliances, as may be sufficient to prevent the rope from slipping.

(14) There shall be attached to every machine worked by steam, water, or mechanical power, and used for lowering or raising persons, an adequate break, and also a proper indicator (in addition to any mark on the rope) which shows to the person who works the machine the position of the cage or load in the shaft.

(15) A ladder permanently used for the ascent or descent of persons in the mine shall not be fixed in a vertical or overhanging position, and shall be inclined at the most convenient angle which the space in which the ladder is fixed allows, and every such ladder shall have substantial platforms at intervals of not more than twenty yards.

(16) If more than twelve persons are ordinarily employed in the mine below ground, sufficient accommodation shall be provided above ground near the principal entrance of the mine, and not in the engine-house or boiler-house, for enabling the persons employed in the mine to conveniently dry and change their dresses.

(17) Every fly-wheel and all exposed and dangerous parts of the machinery used in or about the mine shall be and be kept securely fenced.

(18) Every steam boiler shall be provided with a proper steam gauge and water gauge, to show respectively the pressure of steam and the height of water in the boiler, and with a proper safety valve.

(19) No person shall wilfully damage, or without proper authority remove or render useless, any fencing, casing, lining, guide, means of signalling, signal, cover, chain, flange, horn, break, indicator, ladder, platform, steam gauge, water gauge, safety valve, or other appliance or thing provided in any mine in compliance with this Act.

Every person who contravenes or does not comply with any of the general rules in this section shall be guilty of an offence against this Act, and in the event of any contravention of or non-compliance with any of the said general rules in the case of any mine to which this Act applies, by any person whom-

soever, being proved, the owner and agent of such mine shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means by publishing and to the best of his power enforcing the said rules as regulations for the working of the mine to prevent such contravention or non-compliance.

See note on sect. 50 of Coal Mines Regulation Act, 1887, *infra*.

Special Rules.

Special rules.

24. The owner or agent of any mine to which this Act applies may, if he think fit, transmit to the inspector of the district, for approval by a Secretary of State, rules (referred to in this Act as special rules) for the conduct and guidance of the persons acting in the management of such mine, or employed in or about the same, so as to prevent dangerous accidents, and to provide for the safety and proper discipline of the persons employed in or about the mine, and such special rules, when established, shall be signed by the inspector who is inspector of the district at the time such rules are established, and shall be observed in and about every such mine in the same manner as if they were enacted in this Act.

Contravention of special rules.

If any person who is bound to observe the special rules established for any mine acts in contravention of or fails to comply with any of such special rules, he shall be guilty of an offence against this Act, and also the owner and agent of such mine shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means by publishing and to the best of his power enforcing the said rules as regulations for the working of the mine to prevent such contravention or non-compliance.

See note on sect. 51, sub-sect. (3), of Coal Mines Regulation Act, 1887.

Establishment of special rules.

25. The proposed special rules, together with a printed notice specifying that any objection to such rules on the ground of anything contained therein or omitted therefrom may be sent by any of the persons employed in the mine to the inspector of the district, at his address, stated in such notice, shall, during not less than two weeks before such rules are transmitted to the inspector, be posted up in like manner as is provided in this Act respecting the publication of special rules for the information of persons employed in the mine, and a certificate that such rules and notices have been so posted up shall be sent to the inspector with the rules signed by the person sending the same.

If the rules are not objected to by the Secretary of State within forty days after their receipt by the inspector they shall be established.

If the owner or agent makes any false statement with respect to the posting up of the rules and notices he shall be guilty of an offence against this Act.

Secretary of State may object to special rules.

26. If the Secretary of State is of opinion that the proposed special rules so transmitted, or any of them, do not sufficiently provide for the prevention of dangerous accidents in the mine, or for the safety of the persons employed in or about the mine, or are unreasonable, he may, within forty days after the rules are received by the inspector, object to the rules, and

propose to the owner or agent in writing any modifications in the rules by way either of omission, alteration, substitution, or addition.

If the owner or agent do not, within twenty days after the modifications proposed by the Secretary of State are received by him, object in writing to them, the proposed special rules, with such modifications, shall be established.

If the owner or agent sends his objection in writing within the said twenty days to the Secretary of State, the matter shall be referred to arbitration, and the date of the receipt of such objection by the Secretary of State shall be deemed to be the date of the reference, and the rules shall be established as settled by an award on arbitration.

27. After special rules are established under this Act in any mine, the owner or agent of such mine may from time to time propose in writing to the inspector of the district for the approval of a Secretary of State any amendment of such rules or any new special rules, and the provisions of this Act with respect to the original special rules shall apply to all such amendments and new rules in like manner, as near as may be, as they apply to the original rules.

Amendment of special rules.

A Secretary of State may from time to time propose in writing to the owner or agent of a mine in which there are no special rules, any special rules, and to the owner or agent of a mine in which there are special rules, any new special rules, or any amendment to such special rules, and the provisions of this Act with respect to a proposal of the Secretary of State for modifying the special rules transmitted by the owner or agent of a mine shall apply to all such proposed special rules, new special rules, and amendments in like manner, as near as may be, as they apply to such proposal.

28. For the purpose of making known the special rules (if any) and the provisions of this Act to all persons employed in and about each mine to which this Act applies, an abstract of the Act supplied, on the application of the owner or agent of the mine, by the inspector of the district on behalf of a Secretary of State, and an entire copy of the special rules (if any) shall be published as follows :

Publication of rules and of abstract of this Act.

- (1) The owner or agent of such mine shall cause such abstract and rules (if any), with the name and address of the inspector of the district, and the name of the owner or agent appended thereto, to be posted up in legible characters, in some conspicuous place at or near the mine, where they may be conveniently read by the persons employed; and so often as the same become defaced, obliterated, or destroyed, shall cause them to be renewed with all reasonable despatch :
- (2) The owner or agent shall supply a printed copy of the abstract and the special rules (if any) gratis to each person employed in or about the mine who applies for such copy at the office at which the persons immediately employed by such owner or agent are paid :
- (3) Every copy of the special rules shall be kept distinct from any rules which depend only on the contract between the employer and employed.

If any owner or agent fail to act in compliance with this section he shall be guilty of an offence against this Act, but the owner shall not be deemed

guilty if he prove that he has taken all reasonable means, by enforcing the observance of this section, to prevent such non-compliance.

Punishment
for defacing
notices.

29. Every person who pulls down, injures, or defaces any proposed special rules, notice, abstract, or special rules when posted up in pursuance of the provisions of this Act with respect to special rules, or any notice posted up in pursuance of the special rules, shall be guilty of an offence against this Act.

Certified copy
of special
rules to be
evidence.

30. An inspector under this Act shall, when required, certify a copy which is shown to his satisfaction to be a true copy of any special rules which for the time being are established under this Act in any mine, and a copy so certified shall be evidence (but not to the exclusion of other proof) of such special rules and of the fact that they are duly established under this Act, and have been signed by the inspector.

PART III.

SUPPLEMENTAL.

Penalties.

Penalty for
offences
against Act.

31. Every person employed in or about a mine, other than an owner or agent, who is guilty of any act or omission which in the case of an owner or agent would be an offence against this Act, shall be deemed to be guilty of an offence against this Act.

Every person (*k*) who is guilty of an offence against this Act shall be liable to a penalty not exceeding, if he is an owner or agent, twenty pounds, and if he is any other person two pounds, for each offence; and if an inspector has given written notice of any such offence, to a further penalty not exceeding one pound for every day after such notice that such offence continues to be committed.

Imprisonment
for wilful
neglect en-
dangering life
or limb.

32. Where a person who is an owner or agent or a person employed in or about a mine is guilty of any offence against this Act which, in the opinion of the Court that tries the case, is one which was reasonably calculated to endanger the safety of the persons employed in or about the mine, or to cause serious personal injury to any of such persons, or to cause a dangerous accident, and was committed wilfully by the personal act, personal default, or personal negligence of the person accused, such person shall be liable, if the Court is of opinion that a pecuniary penalty will not meet the circumstances of the case, to imprisonment, with or without hard labour, for a period not exceeding three months.

Appeal against
summary con-
viction to
quarter
sessions.

If any person feel aggrieved by any conviction (*l*) made by a court of summary conviction on determining any information under this Act, by which conviction imprisonment is adjudged in pursuance of this section, or by which conviction the sum adjudged to be paid amounts to or exceeds half

(*k*) Including one of several joint owners: *R. v. Brown* (1857), 7 E. & B. 757.

(*l*) See note on sect. 63 of Coal Mines Act, 1887, *infra*.

the maximum penalty, the person so aggrieved may appeal therefrom, subject to the conditions and regulations following :

- (1) The appeal shall be made to the next court of general or quarter sessions (*m*).

Provided that in Scotland—

- (1) This section shall not apply to any conviction made by a sheriff :
 (2) The term “ entering into a recognizance before a justice of the peace ” shall mean finding caution with the clerk of the justices of the peace to the satisfaction of a justice of the peace, and the term “ recognizance ” shall mean a bond of caution :
 (3) It shall be competent to any person empowered to appeal by this section, to appeal against a conviction by a sheriff to the High Court of Justiciary, in the manner prescribed by such of the provisions of the Act of the twentieth year of the reign of King George the Second, chapter forty-three, and any Acts amending the same, as relate to appeals in matters criminal, and by and under the rules, limitations, conditions, and restrictions contained in the said provisions.

33. All offences and penalties under this Act, and all money and costs by this Act directed to be recovered as penalties, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts before a court of summary jurisdiction. Summary proceedings for offences, penalties, &c.

The “ Court of Summary Jurisdiction,” when hearing and determining an information or complaint, shall be constituted—

- (a) In England, either of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions, or of some magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace and sitting alone or with others at some court or other place appointed for the administration of justice ; or
 (b) In Scotland, of two or more justices of the peace sitting as judges in a justice of the peace court, or of the sheriff or some other magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace, and sitting alone or with others at some court or other place appointed for the administration of justice ; or
 (c) In Ireland, within the police district of Dublin metropolis, of one of the divisional justices of that district sitting at a police court within the district, and elsewhere of two or more justices of the peace sitting in petty sessions at a place appointed for holding petty sessions.

34. In every part of the United Kingdom (*n*) the following provisions shall have effect : General provisions as to summary proceedings.

- (1) Any complaint or information made or laid in pursuance of this Act

(*m*) The provisions that followed were repealed by the Summary Jurisdiction Act, 1884, which, by sect. 6, substitutes the procedure on appeal provided by the Summary Jurisdiction Act, 1879, s. 31.

See, as to the Isle of Man, 54 & 55 Vict. c. 47, s. 1, sub-s. (3).

(*n*) This section is extended to the Isle of Man by 54 & 55 Vict. c. 47.

shall be made or laid within three months from the time when the matter of such complaint or information respectively arose :

Examination
of owner or
agent.

- (1) The owner or agent may, if he think fit, be sworn and examined as an ordinary witness in the case where he is charged in respect of any contravention or non-compliance by another person :
- (5) The Court shall, if required by either party, cause minutes of the evidence to be taken and preserved.

Sub-sects. 2 and 3 are repealed by Summary Jurisdiction Act, 1884, which, by sect. 5, substitutes sect. 39, sub-sects. (1) and (2) of the Summary Jurisdiction Act, 1879.

Prosecution
for offences by
inspector or
with consent
of Secretary
of State.

35. No prosecution shall be instituted against the owner or agent of a mine to which this Act applies for any offence under this Act which can be prosecuted before a court of summary jurisdiction, except by an inspector or with the consent in writing of a Secretary of State ; and in the case of any offence of which the owner or agent of a mine is not guilty, if he proves that he had taken all reasonable means to prevent the commission thereof, an inspector shall not institute any prosecution against such owner or agent, if satisfied that he had taken such reasonable means as aforesaid.

The inspector, so long as he himself determines to prosecute, may lay the information by his authorised agent : *Foster v. Fyfe*, [1896] 2 Q. B. 104. See sect. 1, sub-sect. (5) of the Metalliferous Mines (Isle of Man) Act, 1891, s. 1, sub-s. (5).

Summary pro-
ceedings for
offences in
Scotland.

36. In Scotland the following provisions shall have effect :

- (1) All jurisdictions, powers, and authorities necessary for the court of summary jurisdiction under this Act are hereby conferred on that court :
- (2) Every person found liable under this Act in any penalty, or to pay any money or costs by this Act directed to be recovered as penalties, shall be liable in default of immediate payment to be imprisoned for a term not exceeding three months, and the conviction and warrant may be in the form of No. 3 of Schedule K. of the Summary Procedure Act, 1864.

Persons not to
be punished
twice for the
same offence.

37. Nothing in this Act shall prevent any person from being indicted or liable under any other Act or otherwise to any other or higher penalty or punishment than is provided for any offence by this Act, so that no person be punished twice for the same offence.

If the court before whom a person is charged with an offence under this Act think that proceedings ought to be taken against such person for such offence under any other Act or otherwise, the court may adjourn the case to enable such proceedings to be taken.

Application of
penalties.

38. Where a penalty is imposed under this Act for neglecting to send a notice of any explosion or accident or for any offence against this Act which has occasioned loss of life or personal injury, the Secretary of State may (if he think fit) direct such penalty to be paid to or distributed among the persons injured, and the relatives of any persons whose deaths may have been occasioned by such explosion, accident, or offence or among some of them :

Provided that—

- (1) Such persons did not in his opinion occasion or contribute to occasion

the explosion or accident, and did not commit and were not parties to committing the offence :

- (2) The fact of such payment or distribution shall not in any way affect or be receivable as evidence in any legal proceeding relative to or consequential on such explosion, accident, or offence :

Save as aforesaid, all penalties imposed in pursuance of this Act shall be paid into the receipt of Her Majesty's Exchequer, and shall be carried to the Consolidated Fund.

In Ireland all penalties imposed and recovered under this Act shall be applied in manner directed by the Fines Act (Ireland), 1851, and any Act amending the same.

Miscellaneous.

39. If any question arises whether a mine is a mine to which this Act, or the Coal Mines Regulation Act, 1887, applies, such question shall be referred to a Secretary of State, whose decision thereon shall be final.

As to question whether mine is a mine under this Act.

40. All notices under this Act shall be in writing or print, or partly in writing and partly in print, and all notices and documents required by this Act to be served or sent by or to an inspector or Secretary of State may be either delivered personally, or served and sent by post, by a prepaid letter, and if served or sent by post shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post ; and in proving such service or sending, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post.

Notices may be served by post.

41. In this Act, unless the context otherwise requires, —

The term " mine " includes every shaft in the course of being sunk, and every level and inclined plane in the course of being driven for commencing or opening any mine, or for searching for or proving minerals, and all the shafts, levels, planes, works, machinery, tramways, and sidings, both below ground and above ground, in and adjacent to a mine, and any such shaft, level, and inclined plane, and belonging to the mine :

Interpretation of terms.

The term " shaft " includes pit :

The term " plan " includes a map and section, and a correct copy or tracing of any original plan as so defined :

The term " owner " when used in relation to any mine means any person or body corporate who is the immediate proprietor, or lessee, or occupier of any mine, or of any part thereof, and does not include a person or body corporate who merely receives a royalty, rent, or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant, or license for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mines :

An owner of mines in fee granted a lease of them subject to royalties which were to be paid before the ore was taken away, and reserved right of re-entry and distress in event of non-payment : *Held*, that the owner in fee was " interested in the minerals of the mines," and therefore not within the exception : *Evans v. Mostyn* (1877), 2 C. P. D. 547.

The shaft of an abandoned mine contained water, and was used as and was in fact a public well, which under sect. 64 of the Public Health Act, 1875, was vested in the defendants, the local authority : *Held*, that the defendants were not the

“owners” within the definition, so as to be liable for non-fencing (see sect. 13, *supra* : *Knuckey v. Rebruth Rural District Council*, [1904] 1 K. B. 382).

The term “agent” when used in relation to any mine means any person having, on behalf of the owner, care or direction of any mine, or of any part thereof :

The term “Secretary of State” means one of Her Majesty’s Principal Secretaries of State *(a)* :

The term “Summary Jurisdiction Acts” means as follows *(p)* :

The term “Court of Summary Jurisdiction” means—

In England and Ireland, any justice or justices of the peace, metropolitan police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts, or any Acts therein referred to *(q)* :

In Scotland, any justice or justices of the peace, sheriff, or other magistrate, to the proceedings before whom for the trial or prosecution of any offence, or for the recovery of any penalty under any Act of Parliament, the provisions of the Summary Jurisdiction Acts may be applied.

42. In the application of this Act to Scotland—

(1) The term “chairman of quarter sessions” means the sheriff of the county :

(2) The term “sheriff” includes “sheriff substitute” :

(3) The Queen’s and Lord Treasurer’s Remembrancer shall perform the duties of a Master of one of the Superior Courts under this Act :

(4) Notices of explosions, accidents, and loss of life, or personal injury shall be deemed to be sent to the inspector of the district on behalf of the Lord Advocate :

(5) Section sixteen of “The Public Health (Scotland) Act, 1867,” shall be substituted for section eight of “The Nuisances Removal Act for England, 1855,” as amended and extended by “The Sanitary Act, 1866” *(r)*.

Isle of Man.

43. This Act shall apply to the Isle of Man *(s)*, with the following modifications :

(1) The term “chairman of quarter sessions” means the governor, lieutenant governor, or deputy governor of the said Isle for the time being :

(2) The clerk of the rolls shall perform the duties of a master of one of the superior courts under this Act :

(3) The law of the said Isle as to the abatement or removal of nuisances affecting the health of Her Majesty’s subjects shall be substituted for section eight of “The Nuisances Removal Act for England, 1855,” as amended and extended by “The Sanitary Act, 1866” *(r)*.

Sect. **44** (continuation of former inspectors) and sect. **45** (repeal) and schedule repealed by Statute Law Revision Act (No. 2), 1893, saving appointments and proceedings under repealed Acts.

(a) See Interpretation Act, 1889, s. 12, sub-s. (3).

(p) The definition is repealed by Statute Law Revision Act, 1893 (No. 2), and is replaced by that given in sect. 13, sub-sect. (10), of the Interpretation Act, 1889.

(q) See Interpretation Act, 1889, s. 13, sub-s. (11).

(r) Both Acts superseded by Public Health Act, 1875 : see sects. 91 and 313, and Sched. V., Pt. I.

(s) See Metalliferous Mines (Isle of Man) Act, 1891 (54 & 55 Vict. c. 47).

38 & 39 VICT. c. 39 (1875).

An Act to amend the provisions of "The Metalliferous Mines Regulation Act, 1872," with respect to the annual returns from Mines.

1. The owner or agent of every mine to which "The Metalliferous Mines Regulation Act, 1872," applies shall, on or before the 1st day of February in every year, send to the inspector of the district on behalf of a Secretary of State a correct return, specifying with respect to such mine, for the year ending on the preceding 31st day of December, the quantity in statute weight of the mineral dressed, and of the undressed mineral which has been sold, treated or used, during that year, and the number of persons ordinarily employed in or about such mine, below ground and above ground, distinguishing those who are employed below ground and above ground, and distinguishing the different classes and ages of the persons so employed whose hours of labour are regulated by "The Metalliferous Mines Regulation Act, 1872."

Returns by owners and agents of mines.

The return shall be in such form as may be from time to time prescribed by a Secretary of State, and the inspector of the district on behalf of a Secretary of State shall from time to time, on application, furnish forms for the purpose of such return.

Every owner or agent of a mine who fails to comply with this section, or makes any return which is to his knowledge false in any particular, shall be guilty of an offence against "The Metalliferous Mines Regulation Act, 1872."

Provided that—

- (1) In any mine where not more than twelve persons are employed underground, the returns specifying the quantity of mineral produced shall be made by the barmaster or other local officer, if any, employed to collect the dues or royalty; and
- (2) Where there is such a barmaster or other officer the owner or agent of such mine shall not be required to send any return specifying the number of persons employed in or about such mine.

See sect. 10 of principal Act; and note on sect. 4 on this page, *infra*.

By virtue of the Notice of Accidents Act, 1906 (*ss*), this return is to include a statement of (sect. 1) all accidents which have disabled an employee for more than seven days; (sect. 3) accidents upon lines and sidings used in connection with a mine or quarry.

Section 2. Commencement.—Repealed by Statute Law Revision Act (No. 2), 1893.

3. This Act shall be construed as one with "The Metalliferous Mines Regulation Act, 1872," and that Act and this Act may be cited together as "The Metalliferous Mines Regulation Acts, 1872 and 1875," and this Act may be cited separately as "The Metalliferous Mines Regulation Act, 1875."

Short title and construction.

Section 4, repealing section 10 of principal Act, was itself repealed by Statute Law Revision Act, 1883, without of course affecting the repeal of section 10.

50 & 51 VICT. c. 58 (1887).

An Act to consolidate with amendments the Coal Mines Acts, 1872 and 1886, and the Stratified Ironstone Mines (Gunpowder) Act, 1881.

Preliminary.

- Short title. 1. This Act may be cited as the Coal Mines Regulation Act, 1887.
- Commencement of Act. 2. This Act shall not come into operation until the first day of January one thousand eight hundred and eighty-eight, which date is in this Act referred to as the commencement of this Act.
- Application of Act. 3. This Act shall apply to mines of coal, mines of stratified ironstone, mines of shale, and mines of fire-clay (*a*); and in this Act, unless the context otherwise requires, the word "mine" means a mine (*b*) to which this Act applies.

PART I.

Employment of Boys, Girls, and Women.

- Employment below ground of boys under twelve and of girls and women prohibited. 4. No boy (*b*) under the age of twelve years, and no girl (*b*) or woman (*b*) of any age, shall be employed in or allowed to be for the purpose of employment in any mine below ground.

The age is raised to 13 by 63 & 64 Viet. c. 21. The class "young person," found in the Act of 1872, between 13 and 16, disappears, and "boy" and "girl" is extended to 16 (*vide* sect. 75).

- Hours of employment of boys over twelve below ground. 5. A boy of or above the age of twelve years shall not be employed in or allowed to be for the purpose of employment in any mine below ground for more than fifty-four hours in any one week, nor more than ten hours in any one day, nor otherwise than in accordance with the regulations hereinafter contained with respect to the employment of boys in a mine below ground.

- Regulations as to employment of boys below ground. 6. With respect to the employment of boys in a mine below ground, the following regulations shall have effect; that is to say,

- (1) There shall be allowed an interval of not less than eight hours between the period of employment on Friday and the period of employment on the following Saturday, and in other cases of not less than twelve hours between each period of employment;
- (2) The period of each employment shall be deemed to begin at the time of leaving the surface, and to end at the time of returning to the surface;
- (3) A week shall be deemed to begin at midnight on Saturday night and to end at midnight on the succeeding Saturday night.

(*a*) See Metalliferous Mines Regulation Act, 1872, s. 3, and Quarries Act, 1894, s. 1, *infra*. See also sect. 71, and Home Office Circular of Nov. 28, 1872.
(*b*) Defined by sect. 75.

7. With respect to boys (*c*), girls (*c*), and women (*c*) employed above ground, in connexion with any mine, the following provisions shall have effect: Employment of boys, girls and women above ground.

- (1) No boy or girl under the age of twelve years shall be so employed:
- (2) No boy or girl under the age of thirteen years shall be so employed—
 - (a) for more than six days in any one week; or
 - (b) if employed for more than three days in any one week, for more than six hours in any one day; or
 - (c) in any other case for more than ten hours in any one day:
- (3) No boy or girl of or above the age of thirteen years and no woman shall be so employed for more than fifty-four hours in any one week or more than ten hours in any one day:
- (4) No boy, girl, or woman shall be so employed between the hours of nine at night and five on the following morning, nor on Sunday, nor after two o'clock on Saturday afternoon:
- (5) There shall be allowed an interval *of not less than eight hours between the termination of employment on Friday and the commencement of employment on the following Saturday, and in other cases of not less than twelve hours between the termination of employment on one day, and the commencement of the next employment:*

The words in italics are repealed by the Employment of Women Act, 1907 (7 Edw. 7, c. 10).

- (6) A week shall be deemed to begin at midnight on Saturday night and to end at midnight on the succeeding Saturday night:
- (7) No boy (*c*), girl (*c*), or woman (*c*) shall be employed continuously for more than five hours, without an interval of at least half an hour for a meal, nor for more than eight hours on any one day, without an interval or intervals for meals amounting altogether to not less than one hour and a half:
- (8) No boy (*c*), girl (*c*), or woman (*c*) shall be employed in removing railway waggons.

This sub-section is new.

The provisions of this section as to the employment of boys, girls, and women after two o'clock on Saturday afternoon, shall not apply in the case of any mine in Ireland, so long as it is exempted by order of a Secretary of State.

8.—(1) The owner (*c*), agent (*c*) or manager (*d*) of every mine shall keep in the office at the mine a register, and shall cause to be entered in that register, in such form as the Secretary of State may from time to time prescribe or sanction, the name, age, residence, and date of first employment of all boys employed in the mine below ground, and of all boys, girls, and women employed above ground in connexion with the mine; and shall, on request, produce the register to any inspector (*e*) under this Act, and to any officer of a school board or school attendance committee in the district in which the mine is situate, at the mine at all reasonable times, and shall allow any such inspector or officer to inspect and copy the same. Register to be kept of boys, girls, and women employed.

(*c*) Defined by sect. 75.

(*d*) See sects. 20—32, *infra*.

(*e*) See sects. 39—46, *infra*.

(2) The immediate employer of every boy, other than the owner, agent or manager of the mine, before he causes the boy to be below ground in any mine, shall report to the manager of the mine or to some person appointed by that manager, that he is about to employ the boy in the mine.

Penalty for employment of persons in contravention of Act.

9. If any person contravenes or fails to comply with, or permits (*f*) any person to contravene or fail to comply with, any provisions of this Act with respect to the employment of boys, girls, or women, or to the register of boys, girls, and women, or to reporting the intended employment of boys, he shall be guilty of an offence against this Act; and in the event of any such contravention or non-compliance by any person whomsoever, the owner, agent and manager of the mine shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing the provisions of this Act, to prevent the contravention or non-compliance.

Payment of school fees out of wages.

10.—(1) After a request in writing by the principal teacher of a public elementary school which is attended by any boy or girl employed in or in connexion with a mine, the person who pays the wages of the boy or girl shall as long as he employs the boy or girl pay to the principal teacher of that school, for every week that the boy or girl attends the school, the weekly sum specified in the application, not exceeding twopence per week, and not exceeding one-twelfth part of the wages of the boy or girl, and may deduct the sum so paid by him from the wages payable for the services of the boy or girl.

(2) If any person after such application refuses to pay on demand any sum that becomes due as aforesaid, he shall be liable to a penalty not exceeding ten shillings.

This provision has ceased to be important since the abolition of school fees by the Elementary Education Act, 1891. For the statutes dealing with the education of children in employment, see p. 450, *infra*.

Wages.

Prohibition of payment of wages at public houses, &c.

11.—(1) No wages shall be paid to any person employed in or about any mine at or within any public house, beer shop, or place for the sale of any spirits, beer, wine, cyder, or other spirituous or fermented liquor, or other house of entertainment, or any office, garden or place belonging or contiguous thereto, or occupied therewith.

(2) Every person who contravenes or fails to comply with or permits any person to contravene or fail to comply with this section shall be guilty of an offence against this Act; and in the event of any such contravention or non-compliance by any person whomsoever, the owner, agent and manager of the mine shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means by publishing and to the best of his power enforcing the provisions of this section to prevent the contravention or non-compliance.

Payment of Wages in Public House Prohibition Act, 1883, does not apply to persons under this Act.

(*f*) In *Reg. v. Handley*, 9 L. T. (N. S.) 827, decided under 5 & 6 Vict. c. 99, it was held that to constitute the

offence of "allowing" a breach of the Act, knowledge or acquiescence must be shown.

12.—(1) Where the amount of wages paid to any of the persons employed in a mine depends on the amount of mineral gotten by them, those persons shall be paid according to the *actual weight gotten by them of the mineral contracted to be gotten* (y), and the mineral gotten by them shall be truly weighed at a place as near to the pit mouth as is reasonably practicable.

Payment of persons employed in mines by weight.

Provided that nothing in this section shall preclude the owner, agent or manager of the mine from agreeing with the persons employed in the mine that deductions shall be made in respect of stones or substances other than the mineral contracted to be gotten, which shall be sent out of the mine with the mineral contracted to be gotten, or in respect of any tubs, baskets or hutches being improperly filled in those cases where they are filled by the getter of the mineral or his drawer, or by the person immediately employed by him; *such deductions being determined in such special mode as may be agreed upon between the owner, agent or manager of the mine on the one hand, and the persons employed in the mine on the other, or by some person appointed in that behalf by the owner, agent or manager (y), or (if any check weigher is stationed for this purpose as hereinafter mentioned), by such person and such check weigher, or in case of difference by a third person to be mutually agreed on by the owner, agent or manager of the mine on the one hand, and the persons employed in the mine on the other, or in default of agreement appointed by a chairman of a court of quarter sessions within the jurisdiction of which any shaft of the mine is situate.*

(2) If any person contravenes or fails to comply with, or permits any person to contravene or fail to comply with, this section, he shall be guilty of an offence against this Act; and in the event of any such contravention or non-compliance by any person whomsoever, the owner, agent and manager of the mine shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means by publishing and to the best of his power enforcing the provisions of this section to prevent the contravention or non-compliance.

(3) Where it is proved to the satisfaction of a Secretary of State, *in the case of any mine or class of mines employing not more than thirty persons underground (y)* to be expedient that the persons employed therein should, upon the joint representation of the owner or owners of any such mine or class of mines and the said persons, be paid by any method other than that provided by this Act, such Secretary of State may, if he think fit, by order allow the same either without conditions or during the time and on the conditions specified in the order.

The check weighing sections in this Act are intended to remove certain grievances of the miners with regard to payment of wages according to weight. The Coal Mines Regulation Act, 1860, s. 29, provided that when miners were paid according to weight, measure or gauge, "Such coal, iron, stone, or other mineral shall be truly weighed, measured or gauged accordingly"; and gave power to the men to appoint one of their number to take account of the weighing or measuring. It was alleged that the Act was inoperative, the size of the tubs being increased without any increase in wages. In the Coal Mines Regulation Act, 1872, were sections (17—19) intended to remedy such grievances. The corresponding words in the Act of 1872 (s. 17) were:—

"Such mineral shall be truly weighed accordingly. Provided always that nothing herein contained shall preclude the owner, agent or manager of the

(y) The words in italics are new; cp. sect. 17 of the Act of 1872.

mine from agreeing with the persons employed in such mine that deductions shall be made in respect of stones or materials other than mineral contracted to be gotten, which shall be sent out of the mine with the mineral contracted to be gotten . . . such deductions being determined by the banksman or weigher and check weigher if there be one), or in case of difference by a third party to be mutually agreed on by the owner, agent or manager of the mine on the one hand, and the persons employed in the mine on the other."

In *Bourne v. Netherseal Colliery Co.* (1887), 19 Q. B. D. 357; 20 Q. B. D. 606 (C. A.); 14 A. C. 228, the meaning of these words came before a Divisional Court. Certain colliers had agreed that "coal should be paid for at 16*d.* a ton," and that "no slack whatever will be paid for except that sent out as heading slack; all other slack will be deducted from the different places in proportion to their loading." The coal as it came up, with slack or dust, was first weighed in the presence of the check weigher; then it was put on the "Billy fair-play," as a weighing-machine is called, which separated out and weighed the slack. The check weigher did not see this latter operation, though the owners urged that he should do so, and offered to pay a check weigher for that purpose. The Divisional Court held that the deductions were not made in accordance with the statute, being determined merely by the boy in charge of "Billy fair-play." In the Court of Appeal the appeal was dismissed, but on another ground, *viz.*, that slack was part of "the mineral to be gotten." In the House of Lords the appeal was also dismissed. Lords Halsbury, Herschell and Macnaghten put their opinions on the ground that the wages must be paid on all the mineral gotten, and that slack was coal. Lords Bramwell and Fitzgerald adopted the opinion of the Divisional Court.

In the Act of 1887 (s. 12) the alterations printed above in italics were made. The second alteration has succeeded in its object, *viz.*, that of letting in such arrangements as "Billy fair-play," and the establishment of a certain average percentage for dirt, stones, and so on. But the first amendment has been expressly held to have made no change in the effect of the section whatever. The whole of the stuff brought to bank must still be weighed and the men paid on that weight, minus the permitted deductions, and no others. In *Kearney v. Whitehaven Colliery Co.*, [1893] 1 Q. B. 700 (C. A.), there was an agreement that the workmen should give fourteen days' notice. There was also a system of fines and forfeitures, by which, if the amount of dirt did not exceed 25 lbs. in a tub containing about 15 ewt., there was no forfeiture; if the dirt exceeded 25 lbs., but did not exceed 35 lbs., one half of the tub was forfeited; if the dirt exceeded 35 lbs., the whole tub was forfeited. K. left his employment without giving notice on the ground that the agreement was illegal. The judges in the Divisional Court were divided in opinion as to the illegality of the mode of deduction; but both thought that, assuming the deductions to be illegal, the workman was not by reason thereof entitled to leave without notice. The Court of Appeal thought the deductions illegal. "The things in respect of which deductions are to be made are stones and substances other than the mineral contracted to be gotten, and the deduction must be from the weight in the tub, not from the men's wages" (per Esher, M. R., *l. c.* 708). The Court agreed with the Divisional Court on the point as to absence of notice. In *Brace v. Abercarn Colliery Co.*, [1891] 1 Q. B. 496; [1891] 2 Q. B. 639 (C. A.), the plaintiffs were engaged to cut large coal at 1*s.* 6*d.* per ton; but the defendants refused to pay them for the small coal. The deductions were held illegal, small coal being part of the "mineral contracted to be gotten." "The whole coal, whether small or large, was coal gotten" (per Fry, L. J., *ibid.*, p. 706). The Court also held that the plaintiffs were entitled to be paid at the same rate for small as large. (See also *Mowatt v. Ronaldson* (agreement for average deduction) (1894), 21 R. (J. C.) 55; *Hastie v. Atkinson* ("improper filling") (1894), 21 R. (J. C.) 62.)

An exemption granted to a mine under the old Act, where there was no limitation as to number of employees, continues good after the passing of this Act by virtue of sects. 79 and 84, *infra*, though more than thirty men are and always have been employed therein underground: *Dickinson v. Handsley* (1889), 60 L. T. (N. S.) 567.

Appointment
on part of
men, and
removal, of
check weigher.

13.—(1) The persons who are employed in a mine, and are paid according to the weight of the mineral gotten by them, may, at their own cost, station a person (in this Act referred to as "a check weigher") at each place appointed for the weighing of the mineral, and at each place appointed for determining the deductions in order that he may on behalf of the persons by

whom he is so stationed take a correct account of the weight of the mineral or determine correctly the deductions as the case may be.

(2) A check weigher shall have every facility afforded to him for enabling him to fulfil the duties for which he is stationed, including facilities for examining and testing the weighing machine, and checking the taring of tubs and trams where necessary; and if at any mine proper facilities are not afforded to a check weigher as required by this section, the owner, agent and manager of the mine shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means to enforce to the best of his power the requirements of this section.

(3) A check weigher shall not be authorised in any way to impede or interrupt the working of the mine, or to interfere with the weighing, or with any of the workmen (*h*) or with the management of the mine; but shall be authorised only to take such account or determine such deductions as aforesaid, and the absence of a check weigher from the place at which he is stationed shall not be a reason for interrupting or delaying the weighing or the determination of deductions at such place respectively, but the same shall be done or made by the person appointed in that behalf by the owner, agent or manager, unless the absent check weigher had reasonable ground to suppose that the weighing or the determination of the deductions, as the case may be, would not be proceeded with: Provided always, that nothing in this section shall prevent a check weigher giving to any workman an account of the mineral gotten by him, or information with respect to the weighing, or the weighing machine, or the taring of the tubs or trams, or with respect to the deductions or any other matter within the scope of his duties as check weigher, so always, nevertheless, that the working of the mine be not interrupted or impeded.

(4) If the owner, agent or manager of the mine desires the removal of a check weigher on the ground that the check weigher has impeded or interrupted the working of the mine, or interfered with the weighing, or any of the workmen, or with the management of the mine, or has at the mine to the detriment of the owner, agent or manager done anything beyond taking such account determining such deductions or giving such information as aforesaid, he may complain to a court of summary jurisdiction, who, if of opinion that the owner, agent or manager shows sufficient *prima facie* ground for the removal of the check weigher, shall call on the check weigher to show cause against his removal.

(5) On the hearing of the case the Court shall hear the parties, and, if they think that at the hearing sufficient ground is shown by the owner, agent, or manager to justify the removal of the check weigher, shall make a summary order for his removal, and the check weigher shall thereupon be removed, but without prejudice to the stationing of another check weigher in his place.

(6) The Court may in every case make such order as to the costs of the proceedings as the Court may think just.

(7) If in pursuance of any order of exemption made by a Secretary of State, the persons employed in a mine are paid by the measure or gauge of

(*h*) This is new. See *Prentice v. Hall* (1877), 37 L. T. 605.

the material gotten by them, the provisions of this Act shall apply in like manner as if the term "weighing" included measuring and gauging, and the terms relating to weighing shall be construed accordingly.

(8) If the person appointed by the owner, agent, or manager to weigh the mineral impedes or interrupts the check weigher in the proper discharge of his duties, or improperly interferes with or alters the weighing machine or the tare in order to prevent a correct account being taken of the weighing and taring, he shall be guilty of an offence against this Act.

Considerable amendments are effected in this section by the Coal Mines (Weighing of Minerals) Act, 1905 (5 Edw. 7, c. 9), which is printed *infra*, at p. 855.

Under the old Act the check weigher had to be a miner in the owner's employ. See *Hopkinson v. Caunt* (1886), 14 Q. B. D. 592.

Sub-sect. (3), from "or the determination of deductions" to the end, and sub-sect. (8) are new. As to interference by the owner, agent or manager in the appointment of a check weigher, see Coal Mines (Check Weigher) Act, 1894, *infra*, at p. 428. As to order for removal, see sect. 61, sub-sect. (2).

In *Whitehead v. Holdsworth* (1878), 4 Ex. D. 13, the appellant had been appointed check weigher by the miners. Subsequently the respondents dismissed all the miners and closed the mine. No notice was given to the appellant by any one. *Held*, that the appellant had, on the dismissal of the miners, ceased to be a check weigher, and that an action for damages could not be maintained.

Remuneration
of check
weigher.

14.—(1) Where a check weigher has been appointed by the majority, ascertained by ballot, of the persons employed in a mine who are paid according to the weight of the mineral gotten by them, and has acted as such, he may recover from any person for the time being employed at such mine and so paid, his proportion of the check weigher's wages or recompense, notwithstanding that any of the persons by whom the check weigher was appointed may have left the mine or others have entered the same since the check weigher's appointment, any rule of law or equity to the contrary notwithstanding.

(2) It shall be lawful for the owner or manager of any mine, where the majority of the before-mentioned persons, ascertained as aforesaid, so agree, to retain the agreed contribution of the persons so employed and paid as aforesaid for the check weigher, notwithstanding the provisions of the Acts relating to truck (i), and to pay and account for the same to the check weigher.

This section is amended by the Coal Mines (Weighing of Minerals) Act, 1905 (5 Edw. 7, c. 9), which is printed *infra*, at p. 855.

Application of
41 & 42 Vict.
c. 49, to
weights, &c.
used in mines.

15.—(1) The Weights and Measures Act, 1878, shall apply to all weights, balances, scales, steelyards, and weighing machines used at any mine for determining the wages payable to any person employed in the mine according to the weight of the mineral gotten by him, in like manner as it applies to weights, balances, scales, steelyards, and weighing machines used for trade.

(2) An inspector of weights and measures appointed under the said Act shall once at least in every six months inspect and examine in manner directed by the said Act the weights, balances, scales, steelyards, and weighing machines used or in the possession of any person for use as aforesaid at any mine within his district; and shall also make such inspection

and examination at any other time in any case where he has reasonable cause to believe that there is in use at the mine any false or unjust weight, balance, scale, steelyard, or weighing machine.

(3) The inspector shall also inspect and examine the measures and gauges in use at the mines within his district; but nothing in this section shall prevent or interfere with the use of the measures or gauges ordinarily used at the mine.

(4) An inspector may, for the purposes of this section, without any authorisation from a justice of the peace, exercise at or in any mine, as respects all weights, measures, scales, balances, steelyards, and weighing machines used or in the possession of any person for use at or in that mine, all such powers as he could exercise, if authorised in writing by a justice of the peace, under section forty-eight of the Weights and Measures Act, 1878, with respect to any such weights, measures, scales, balances, steelyards, and weighing machines as therein mentioned; and all the provisions of that section, including the liability to penalties, shall apply to such inspection.

(5) The inspector of weights and measures shall not, in fulfilling the duties required of him under this section, impede or obstruct the working of the mine.

Single Shafts.

16.—(1) After the commencement of this Act the owner, agent, or manager of a mine shall not employ any person in the mine, or permit any person to be in the mine for the purpose of employment therein, unless the following conditions respecting shafts (*k*) or outlets are complied with, that is to say,—

Prohibition of single shafts.

- (a) There must be at least two shafts or outlets, with which every seam for the time being at work in the mine shall have a communication, so that such shafts or outlets shall afford separate means of ingress and egress available to the persons employed in every such seam, whether the shafts or outlets belong to the same mine or to more than one mine;
- (b) Such shafts or outlets must not at any point be nearer to one another than fifteen yards; and there shall be between such two shafts or outlets a communication not less than four feet wide and three feet high, and in the case of communications made after the commencement of this Act between shafts or outlets, not less than four feet high.
- (c) Proper apparatus for raising and lowering persons at each such shaft or outlet shall be kept on the works belonging to the mine; and such apparatus if not in actual use at the shafts or outlets, shall be constantly available for use.

(2) Every owner, agent and manager of a mine who acts in contravention of or fails to comply with this section shall be guilty of an offence against this Act.

(3) Any of Her Majesty's superior courts, whether any other proceedings have or have not been taken, may, on the application of the Attorney-General, prohibit by injunction the working of any mine in which any

(*k*) Defined by sect. 75.

person is employed, or is permitted to be for the purpose of employment, in contravention of this section, and may award such costs in the matter of the injunction as the Court thinks just; but this provision shall be without prejudice to any other remedy permitted by law for enforcing the provisions of this Act.

(4) Written notice of the intention to apply for such injunction in respect of any mine shall be given to the owner, agent or manager of the mine not less than ten days before the application is made.

Agreements
not to preclude
compliance
with Act.

17. No person shall be precluded by any agreement from doing such acts as may be necessary for providing a second shaft or outlet to a mine, where the same is required by this Act, or be liable under any contract to any penalty or forfeiture for doing such acts as may be necessary in order to comply with the provisions of this Act with respect to shafts or outlets.

Exceptions
from provi-
sions as to
shafts.

18. The foregoing provisions of this Act with respect to shafts or outlets shall not apply—

(i) In the case of a new mine being opened—

- (a) to any working for the purpose of making a communication between two or more shafts; or
- (b) to any working for the purpose of searching for or proving minerals;

so long as not more than twenty persons are employed below ground at any one time in the whole of the different seams in connexion with a single shaft or outlet: nor

(ii) To any proved mine so long as it is exempted by order of a Secretary of State on the ground either—

- (a) that the quantity of mineral proved is not sufficient to repay the outlay which would be occasioned by sinking or making a second shaft or outlet, or by establishing communication with a second shaft or outlet, in any case where such communication existed and has become unavailable; or
- (b) that the workings in any seam of the mine have reached the boundary of the property or the extremity of the mineral field of which that seam is a part, and that it is expedient to work away the pillars already formed in course of the ordinary working, notwithstanding that one of the shafts or outlets may be cut off by so working away the pillars of that seam;

and so long as not more than twenty persons are employed below ground at any one time in the whole of the different seams in connexion with a single shaft or outlet; nor

(iii) To any mine—

- (a) while a shaft is being sunk, or an outlet being made: or
- (b) one of the shafts or outlets of which has become, by reason of some accident, unavailable for the use of the persons employed in the mine:

so long as the mine is exempted by order of a Secretary of State, and as the conditions (if any) annexed to the order of exemption are duly observed. The provision in this Act requiring the two shafts or outlets of a mine to be separated by a distance of not less than fifteen yards shall not apply to any

mine which is provided with two shafts sunk before the first day of January one thousand eight hundred and sixty-five but at that time separated by a distance of less than ten feet, or commenced to be sunk before the commencement of this Act but separated by a distance of more than ten feet and less than fifteen yards.

The foregoing provisions of this Act as to the dimensions of the communication between two shafts or outlets shall not apply to any mine or class of mines so long as the same is exempted therefrom by order of a Secretary of State by reason of the thinness of the seams or other exigencies affecting that mine or class of mines, and so long as the conditions (if any) annexed to the order of exemption are duly observed.

Division of Mine into Parts.

19.—(1) Where two or more parts of a mine are worked separately, the owner, agent or manager of the mine may give notice in writing to that effect to the inspector of the district, and thereupon each such part shall, for all the purposes of this Act, be deemed to be a separate mine.

Division of mine into parts.

(2) If a Secretary of State is of opinion that the division of a mine in pursuance of this section tends to lead to evasion of the provisions of this Act, or otherwise to prevent the carrying of this Act into effect, he may object to the division by notice served on the owner, agent or manager of the mine; and the owner, agent, or manager, if he declines to acquiesce in such objection, may, within twenty days after receipt of the notice, send a notice to the inspector of the district stating that he declines so to acquiesce, and thereupon the matter shall be determined by arbitration in manner provided by this Act; and the date of the receipt of the last-mentioned notice shall be deemed to be the date of the reference.

Certificated Managers.

20.—(1) Every mine shall be under a manager, who shall be responsible for the control, management, and direction of the mine, and the owner or agent of every such mine shall nominate himself or some other person to be the manager of such mine, and shall send written notice to the inspector of the district of the manager's name and address.

Appointment of manager of mine.

(2) A person shall not be qualified to be a manager of a mine unless he is for the time being registered as the holder of a first class certificate under this Act.

(3) If any mine is worked for more than fourteen days without there being such a manager for the mine as is required by this section, the owner and agent of the mine shall each be liable to a fine not exceeding fifty pounds, and to a further fine not exceeding ten pounds for every day during which the mine is so worked.

Provided that—

- (a) The owner of the mine shall not be liable to any such fine if he proves that he had taken all reasonable means by the enforcement of this section to prevent the mine being worked in contravention of this section;

- (b) If for any reasonable cause there is for the time being no manager of a mine qualified as required by this section, the owner or agent of the mine may appoint any competent person not holding a certificate under this Act to be manager, for a period not exceeding two months or such longer period as may elapse before such person has an opportunity in the district wherein the mine is situate of obtaining by examination a certificate under this Act, and shall send to the inspector of the district a written notice of the manager's name and address, and of the reason for his appointment; and
- (c) A mine in which not more than thirty persons are employed below ground shall be exempt from the provisions of this section, unless the inspector of the district, by notice in writing served on the owner or agent of the mine, requires that it be under the control of a manager.

Daily supervision of mine by manager or under-manager.

21.—(1) In every mine required by this Act to be under the control of a certificated manager, daily personal supervision shall be exercised either by the manager, or by an under-manager nominated in writing by the owner or agent of the mine.

(2) Every person so nominated must hold either a first class or a second class certificate under this Act, and shall, in the absence of the manager, have the same responsibility, and be subject to the same liabilities as the manager under this Act; but the nomination of an under-manager shall not affect the personal responsibility of the manager under this Act.

Disqualifications for post of manager or under-manager.

22. A contractor for mineral, or person employed by such a contractor, is not eligible for the post of manager or under-manager under this Act.

This section is new.

The common law principle of "common employment" applies in the case of a manager under this Act: *Howells v. Landore Steel Co.* (1874), L. R. 10 Q. B. 62.

Constitution of Board for appointing examiners for granting certificates of competency to managers and under-managers.

23.—(1) There shall be two descriptions of certificates of competency under this Act, (i) first class certificates, that is to say, certificates of fitness to be manager; and (ii) second class certificates, that is to say, certificates of fitness to be under-manager; but no person shall be entitled to a certificate under this Act unless he shall have had practical experience in a mine for at least five years.

(2) For the purpose of granting in any part of the United Kingdom, to be from time to time defined by an order of a Secretary of State, certificates of competency for the purposes of this Act, examiners shall be appointed by a board consisting of—

- (a) Three persons being owners of mines in the said part of the United Kingdom; and
- (b) Three persons employed or who have been employed in or about any mine in the said part of the United Kingdom, not being owners, agents or managers of a mine; and
- (c) Three persons practising as mining engineers, agents or managers of mines, or coal viewers in the said part of the United Kingdom; and
- (d) One inspector under this Act.

(3) The members of the board shall be appointed and may be removed by a Secretary of State, and shall hold office during his pleasure.

To sub-sect. (1) are added other alternative qualifications by the Coal Mines Regulation Act (1887) Amendment Act, 1903: see p. 431, *infra*.

24.—(1) The proceedings of each board shall be in accordance with the rules contained in Schedule One to this Act. Proceedings and powers of board for appointing examiners.

(2) Each board shall from time to time appoint examiners, not being members of the board, except with the consent of the Secretary of State, to conduct the examinations in the part of the United Kingdom for which the board acts, of applicants for certificates of competency under this Act, and may from time to time make, alter and revoke rules as to the conduct of such examinations and the qualifications of the applicants, so, however, that in every such examination regard shall be had to such knowledge as is necessary for the practical working of mines in that part of the United Kingdom, and that the examination and qualifications of applicants for second class certificates shall be suitable for practical working miners.

(3) Each board shall make from time to time to a Secretary of State a report of their proceedings, and of such other matters as a Secretary of State may from time to time require.

25. A Secretary of State may from time to time make, alter and revoke rules as to the places and times of examinations of applicants for certificates of competency under this Act, the number and remuneration of the examiners, and the fees to be paid by the applicants, so that the fees do not exceed those specified in Schedule Two to this Act. Every such rule shall be observed by every board appointed under this Act to which it applies. Rules by Secretary of State as to examinations.

26.—(1) A Secretary of State shall deliver to every applicant who is duly reported by the examiners to have passed the examination satisfactorily, and to have given satisfactory evidence of his sobriety, experience, ability and general good conduct, such a certificate of competency as the case requires. The certificate shall be in such form as a Secretary of State from time to time directs. Grant of certificates to applicants on passing examination.

(2) A register of the holders of such certificates shall be kept by such person and in such manner as a Secretary of State from time to time directs.

27. If at any time representation is made to a Secretary of State by an inspector or otherwise, that any manager or under-manager holding a certificate under this Act is by reason of incompetency or gross negligence unfit to discharge his duties, or has been convicted of an offence against this Act, the Secretary of State may, if he think fit, cause inquiry to be made into the conduct of the manager or under-manager, and with respect to every such inquiry the following provisions shall have effect: Inquiry into competency of manager, and cancellation of certificate in case of unfitness.

(1) The inquiry shall be public, and shall be held at such place as the Secretary of State may appoint by such county court judge, metropolitan police magistrate, stipendiary magistrate, or other person or persons, as may be directed by the Secretary of State, and either alone or with the assistance of any assessor or assessors named by the Secretary of State:

- (2) The Secretary of State shall, before the commencement of the inquiry, furnish to the manager or under-manager a statement of the case on which the inquiry is instituted :
- (3) Some person appointed by the Secretary of State shall undertake the management of the case :
- (4) The manager or under-manager may attend the inquiry by himself, his counsel, solicitor, or agent, and may, if he thinks fit, be sworn and examined as an ordinary witness in the case :
- (5) The person or persons appointed to hold the inquiry, in this Act referred to as the Court, shall, on the conclusion of the inquiry, send to the Secretary of State a report containing a full statement of the case, and the opinion of the Court thereon, and such report of, or extracts from the evidence, as the Court may think fit :
- (6) The Court shall have power to cancel or suspend the certificate of the manager or under-manager, if it finds that he is by reason of incompetency or gross negligence, or of his having been convicted of an offence against this Act, unfit to discharge his duty :
- (7) The Court may, if it thinks fit, require a manager or under-manager to deliver up his certificate, and if any manager or under-manager fails, without sufficient cause to the satisfaction of the Court, to comply with such requisition, he shall be liable to a fine not exceeding one hundred pounds. The Court shall hold a certificate so delivered until the conclusion of the investigation, and shall then either restore, cancel or suspend the certificate according to its judgment on the case :
- (8) The Court shall have for the purpose of the inquiry, all the powers of a court of summary jurisdiction, and all the powers of an inspector under this Act :
- (9) The Court may also, by summons signed by the Court, require the attendance of all such persons as it thinks fit to summon and examine for the purpose of the inquiry ; and every person so summoned shall be allowed such expenses as would be allowed to a witness attending on subpoena before a court of record ; and in case of dispute as to the amount to be allowed, the same shall be referred by the Court to a master of one of Her Majesty's superior courts, who, on request signed by the Court, shall ascertain and certify the proper amount of such expenses.

Costs and
expenses of
inquiry.

28.—(1) The Court may make such order as it thinks fit respecting the costs and expenses of the inquiry, and such order shall, on the application of any party entitled to the benefit thereof, be enforced by any court of summary jurisdiction as if such costs and expenses were a fine imposed by that court.

(2) The Secretary of State may, if he thinks fit, pay to the person or persons constituting the Court, including any assessors, such remuneration as he may with the consent of the Treasury appoint.

(3) Any costs and expenses ordered by the Court to be paid by a Secretary of State, and any remuneration paid under this section, shall be paid out of moneys provided by Parliament.

29.—(1) Where a certificate of a manager or under-manager is cancelled or suspended in pursuance of this Act, a Secretary of State shall cause the cancellation or suspension to be recorded in the register of holders of certificates.

Record of cancellation of certificate, restoration in certain cases.

(2) A Secretary of State may at any time, if it is shown to him to be just so to do, renew or restore, on such terms as he thinks fit, any certificate which has been cancelled or suspended in pursuance of this Act, and cause the renewal or restoration to be recorded in the register aforesaid.

30. Whenever any person proves to the satisfaction of a Secretary of State that he has, without fault on his part, lost or been deprived of any certificate granted to him under this Act, the Secretary of State shall, on payment of such fee, if any, as he may direct, but not exceeding the fee specified in Schedule Two to this Act, cause a copy of the certificate to which the applicant appears by the register to be entitled, to be made out and certified by the person who keeps the register, and delivered to the applicant; and any copy which purports to be so made and certified as aforesaid shall have all the effect of the original certificate.

Copy of certificate in case of loss.

31.—(1) All expenses incurred by a Secretary of State with the concurrence of the Treasury in carrying into effect the provisions of this Act with respect to certificates of competency shall be defrayed out of moneys provided by Parliament.

Expenses in relation to certificates, and application of fees.

(2) All fees payable by the applicants for examination for or for a copy of a certificate under this Act shall be paid into the receipt of Her Majesty's Exchequer in such manner as the Treasury may from time to time direct, and be carried to the Consolidated Fund.

32. Every person who commits any of the following offences; that is to say,

Penalty for forgery of, or false declaration as to, certificate.

- (1) Forges, or counterfeits, or knowingly makes any false statement in any certificate of competency under this Act, or in any certificate of service granted under this Act or any Act repealed by this Act, or any official copy of any such certificate; or
- (2) Knowingly utters or uses any such certificate or copy which has been forged or counterfeited or contains any false statement; or
- (3) For the purpose of obtaining, for himself or any other person, employment as a certificated manager or under-manager, or the grant renewal or restoration of any certificate under this Act, or a copy thereof, either
 - (a) makes or gives any declaration, representation, statement or evidence which is false in any particular, or
 - (b) knowingly utters, produces, or makes use of any such declaration, representation, statement or evidence, or any document containing the same,

shall be guilty of a misdemeanour, and be liable on conviction to imprisonment for a term not exceeding two years, with or without hard labour.

Returns, Plan, Notices, and Abandonment.

33.—(1) On or before the twenty-first day of January in every year the owner agent or manager of every mine shall send to the inspector of the district on behalf of a Secretary of State a correct return, specifying, with

Returns by owner, agent or manager of mine.

respect to the year ending on the preceding thirty-first day of December, the particulars contained in the form in Schedule Three to this Act, or in such other form as may from time to time be prescribed in lieu of that form by a Secretary of State: Provided that in the case of any mine which is not required by this Act to be under the control of a certificated manager, a return shall not be required of the particulars contained in Part B. of the said form unless or until a Secretary of State otherwise prescribes.

(2) Forms for the purpose of the returns required by this section shall from time to time, on application, be furnished by the inspector of the district on behalf of the Secretary of State.

(3) The Secretary of State may publish the aggregate results of the returns made under this section with respect to any particular county or inspector's district, or any large portion of a county or inspector's district, and so much of any individual return as does not relate to the quantity of mineral gotten or wrought, but the portion of any individual return relating to the quantity of mineral gotten or wrought shall not be published without the consent of the person making the return, or of the owner of the mine to which it relates; and no person except an inspector or Secretary of State or any body of commissioners incorporated by Act of Parliament for the drainage of mines, and authorised to assess and levy rates in respect of minerals gotten from such mines, shall be entitled, without such consent, to see such portion as aforesaid of any individual return.

(4) Every owner agent or manager of a mine who fails to comply with this section or makes any return which is to his knowledge false in any particular shall be guilty of an offence against this Act.

This return must include accidents which caused disablement for more than seven days, and accidents on lines and sidings used in connection with the mine: see Notice of Accidents Act, 1906, ss. 1, 3, printed *infra*, at p. 859.

Plan of mine
to be kept at
office.

34.—(1) The owner agent or manager of every mine shall keep in the office at the mine an accurate plan (*l*) of the workings of the mine, showing the workings up to a date not more than three months previously, and the general direction and rate of dip of the strata, together with a section of the strata sunk through, or if that be not reasonably practicable, a statement of the depth of the shaft, with a section of the seam.

(2) The owner agent or manager of the mine shall, on request at any time of an inspector under this Act, produce to him at the office at the mine such plan and section, and shall also on the like request mark on such plan and section the then state of the workings of the mine; and the inspector shall be entitled to examine the plan and section, and for official purposes only to make a copy of any part thereof respectively.

(3) If the owner agent or manager of any mine fails to keep, or wilfully refuses to produce or allow to be examined, the plan and section aforesaid, or wilfully withholds any portion thereof, or wilfully refuses, on request, to mark thereon the state of the workings of the mine, or conceals any part of those workings, or produces an imperfect or inaccurate plan or section, he shall (unless he shows that he was ignorant of the concealment, imperfection,

(*l*) Defined by sect. 75.

or inaccuracy) be guilty of an offence against this Act; and further, the inspector may by notice in writing (whether a penalty for the offence has or has not been inflicted) require the owner, agent, or manager to cause an accurate plan and section, showing the particulars herein-before required, to be made within a reasonable time at the expense of the owner of the mine. Every such plan must be on a scale of not less than that of the Ordnance Survey of twenty-five inches to the mile or on the same scale as the plan for the time being in use at the mine.

(4) If the owner agent or manager fails within twenty days after the requisition of the inspector, or within such further time as may be allowed by a Secretary of State, to cause such plan and section to be made as hereby required, he shall be guilty of an offence against this Act.

Sect. 3 of the Coal Mines Regulation Act, 1896, requires further details to be shown in the plan: see p. 428, *infra*.

35.—(1) (II).

(2) Where loss of life or serious personal injury has immediately resulted from an explosion or accident, the place where the explosion or accident occurred shall be left as it was immediately after the explosion or accident, until the expiration of at least three days after the sending of such notice as aforesaid of such explosion or accident, or until the visit of the place by an inspector, whichever first happens, unless compliance with this enactment would tend to increase or continue a danger or would impede the working of the mine.

(3) Where any personal injury, of which notice is required to be sent under this section, results in the death of the person injured, notice in writing of the death shall be sent to the inspector of the district on behalf of a Secretary of State within twenty-four hours after such death comes to the knowledge of the owner agent or manager.

(4) Every owner agent or manager who fails to act in compliance with this section shall be guilty of an offence against this Act.

Notice to be given of accidents in mines.

The Notice of Accidents Act, 1894 (see *infra*), does not apply to mines. Sub-sect. (2) is new.

36. In any of the following cases, namely,

- (i) Where any working is commenced for the purpose of opening a new shaft for or a seam of any mine;
- (ii) Where a shaft or seam of any mine is abandoned or the working thereof discontinued;
- (iii) Where the working of a shaft or a seam of any mine is recommenced after any abandonment or discontinuance for a period exceeding two months; or
- (iv) Where any change occurs in the name of any mine or in the name of the owner, agent or manager of any mine to which this Act applies,

Notice to be given of opening and abandonment of mine.

(II) This sub-section is repealed and replaced by a new sub-section by virtue of sect. 2, sub-sect. (1) of the Notice of Accidents Act, 1906. This latter Act, which is printed *infra*, also requires (sect. 3) notification of accidents upon lines and sidings used in connection with the mine: see also sect. 5 of that Act, and the order thereunder as to notice of dangerous occurrences.

or in the principal officers of any incorporated company which is the owner of a mine ;

the owner agent or manager of the mine shall give notice thereof to the inspector of the district within two months after the commencement, abandonment, discontinuance, re-commencement or change, and if such notice is not given the owner agent or manager shall be guilty of an offence against this Act.

Fencing in
case of
abandoned
mine.

37.—(1) Where any mine is abandoned or the working thereof discontinued, at whatever time the abandonment or discontinuance occurred (*m*), the owner thereof, and every other person interested in the minerals of the mine, shall cause the top of every shaft and every side entrance from the surface to be and to be kept securely fenced for the prevention of accidents :

Provided that—

(i) Subject to any contract to the contrary, the owner of the mine shall, as between himself and any other person interested in the minerals of the mine, be liable to carry into effect this section, and to pay any costs, charges and expenses incurred by any other person interested in the minerals of the mine in carrying this section into effect :

(ii) Nothing in this section shall exempt any person from any liability under any other Act, or otherwise.

(2) If any person fails to act in conformity with this section, he shall be guilty of an offence against this Act.

(3) No person shall be precluded by any agreement from doing, or be liable under any contract to any damages, penalty or forfeiture for doing such acts as may be necessary in order to comply with the provisions of this section.

(4) If any occupier of land or other person wilfully obstructs the owner of a mine or other person interested as aforesaid in doing any such acts, he shall be guilty of an offence against this Act.

(5) Any shaft or side entrance which is not fenced as required by this section, and is within fifty yards of any highway, road, footpath, or place of public resort, or is in open or uninclosed land, shall be deemed to be a nuisance within the meaning of section ninety-one of the Public Health Act, 1875.

38 & 39 Vict.
c. 55.

38.

For sub-sects. (1) and (2) two other sub-sections are substituted by sect. 4 of the Coal Mines Regulation Act, 1896 : see *infra*, p. 429.

(3) The owner aforesaid shall also, within three months of the abandonment of the mine or seam, send to the inspector of the district, on behalf of a Secretary of State, a correct return specifying, with respect to the period which has elapsed since the expiration of the year covered by the last annual return made under this Act, the particulars required in that return ; and the provisions of this Act with respect to the said annual return shall apply to the return so sent.

(*m*) *Stott v. Dickinson* (1876), 34 L. T. 291.

(4) If the owner of a mine or seam fails to comply with this section, he shall be guilty of an offence against this Act, and be liable to a fine not exceeding thirty pounds.

(5) A complaint or information of an offence under this section may be made or laid at any time within six months after abandonment of the mine or seam, or after service on the owner aforesaid of a notice to comply with the requirements of this section, whichever last happens.

Inspection.

39.—(1) A Secretary of State may from time to time appoint any fit persons to be inspectors (under whatever title he may from time to time fix) of mines, and assign them their duties, and may award them such salaries as the Treasury may approve, and may remove any such inspector: Provided always, that in the appointment of inspectors of mines in Wales and Monmouthshire among candidates, otherwise equally qualified, persons having a knowledge of the Welsh language shall be preferred.

Appointment of inspectors of mines.

(2) Notice of the appointment of every such inspector shall be published in the London Gazette.

(3) Every such inspector is referred to in this Act as an inspector, and the inspector of a district means the inspector who is for the time being assigned to the district or portion of the United Kingdom with reference to which the term is used.

(4) Any person appointed or acting as inspector under the Metalliferous Mines Regulation Act, 1872, if directed by a Secretary of State to act as an inspector under this Act, may so act, and shall be deemed to be an inspector under this Act.

35 & 36 Vict. c. 77.

(5) The salaries of the inspectors and the expenses incurred by them or by a Secretary of State in the execution of this Act shall continue to be paid out of moneys to be provided by Parliament.

40. Any person who practises or acts as or is a partner of any person who practises or acts as a land agent or mining engineer, or as a manager, viewer, agent or valuer of mines, or arbitrator in any difference arising between owners, agents, or managers of mines, or is otherwise employed in or about any mine, or is a miner's agent or a mine owner (whether the mine is one to which this Act applies or not), shall not act as an inspector of mines under this Act, and no inspector shall be a partner or have any interest direct or indirect in any mine in the district under his charge.

Disqualification of persons as inspectors.

41. An inspector under this Act shall have power to do all or any of the following things; namely,

Powers of inspectors.

- (i) To make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act relating to matters above ground or below ground are complied with in the case of any mine:
- (ii) To enter, inspect and examine any mine, and every part thereof, at all reasonable times by day and night, but so as not to impede or obstruct the working of the mine:
- (iii) To examine into and make inquiry respecting the state and condition of any mine, or any part thereof, and the ventilation of the mine, and the sufficiency of the special rules for the time being in force

in the mine, and all matters and things connected with or relating to the safety of the persons employed in or about the mine or any mine contiguous thereto, or the care and treatment of the horses and other animals used in the mine:

- (iv) To exercise such other powers as may be necessary for carrying this Act into effect.

Every person who wilfully obstructs any inspector in the execution of his duty under this Act, and every owner, agent and manager of a mine who refuses or neglects to furnish to the inspector the means necessary for making any entry, inspection, examination or inquiry under this Act, in relation to the mine, shall be guilty of an offence against this Act.

Inspectors also have power to enforce the Truck Acts (50 & 51 Vict. c. 46, s. 13), and the provisions of the Elementary Education Acts as to the Employment of Children (39 & 40 Vict. c. 79, s. 7).

Notice by
inspector of
causes of
danger not
expressly
provided
against.

42.—(1) If in any respect (which is not provided against by any express provision of this Act, or by any special rule) any inspector finds any mine, or any part thereof, or any matter, thing or practice in or connected with any such mine, or with the control, management, or direction thereof by the manager to be dangerous or defective, so as in his opinion to threaten or tend to the bodily injury of any person, he may give notice in writing thereof to the owner, agent or manager of the mine, and shall state in the notice the particulars in which he considers the mine or any part thereof, or any matter, thing or practice, to be dangerous or defective, and require the same to be remedied; and unless the same be forthwith remedied shall also report the same to a Secretary of State.

(2) If the owner, agent or manager of the mine objects to remedy the matter complained of in the notice he may, within ten days after the receipt of the notice, send his objection in writing, stating the grounds thereof, to a Secretary of State; and thereupon the matter shall be determined by arbitration in manner provided by this Act (u): and the date of the receipt of the objection shall be deemed to be the date of the reference.

(3) If the owner, agent or manager fail, when no objection is sent as aforesaid, to comply with the requisition of the notice within ten days after the expiration of the time for objection, or when there has been an arbitration to comply with the award within the time fixed by the award, he shall be guilty of an offence against this Act, and the notice and award shall respectively be deemed to be written notice of the offence.

Provided that the Court, if satisfied that the owner, agent or manager has taken active measures for complying with the notice or award, but has not, with reasonable diligence, been able to complete the works, may adjourn any proceedings taken before them for punishing the offence, and, if the works are completed within a reasonable time, no penalty shall be inflicted.

(4) No person shall be precluded by any agreement from doing, or be liable under any contract to any penalty or forfeiture for doing, such acts as may be necessary in order to comply with the provisions of this section.

The arbitrator only has to say whether the matter is to be remedied or not; he has no power to direct what remedy is to be adopted: *In re Home Secretary and Fletcher* (1887), 18 Q. B. D. 339.

In *Reg. v. Spon Lane Colliery* (1878), 3 Q. B. D. 673, the appellants were owners of a colliery. The district inspector gave them notice of a dangerous accumulation of water near their workings, and ordered them to remedy it. The water was in the shaft of an adjoining colliery, and the defendants had no power to interfere with the water in it. They took all practicable steps to reduce the accumulation of water, but after the notice did not remove their own men. *Held*, that the inspector could only give notice under sect. 46 when the danger could be actually remedied by the occupier of the mine; that the section did not apply in a case in which the source of danger was beyond his control; and that the only remedy in the circumstances was provided by sect. 51, rule 6. The section and rule in question are substantially re-enacted by sect. 42 and sect. 49, rule 7, of the present Act.

43. Every inspector of a district under this Act shall make an annual report of his proceedings during the preceding year to a Secretary of State, which report shall be laid before both Houses of Parliament. Annual reports of inspectors.

44. Where in any mine an explosion or accident has caused loss of life or personal injury to any person, a Secretary of State may at any time direct an inspector to make a special report with respect to the explosion or accident. Special reports of inspectors.

45. Where it appears to a Secretary of State that a formal investigation of any explosion or accident and of its causes and circumstances is expedient, the Secretary of State may direct such investigation to be held, and with respect to any such investigation the following provisions shall have effect: Formal investigation when directed by Secretary of State.

- (1) The Secretary of State may appoint a competent person to hold the investigation, and may appoint any person or persons possessing legal or special knowledge to act as assessor or assessors in holding the investigation.
- (2) The person or persons so appointed (hereinafter called the Court) shall hold the investigation in open court, in such manner and under such conditions as the Court may think most effectual for ascertaining the causes and circumstances of the explosion or accident, and enabling the Court to make the report in this section mentioned.
- (3) The Court shall have for the purpose of the investigation all the powers of a court of summary jurisdiction when acting as a Court in hearing informations for offences against this Act, and all the powers of an inspector under this Act, and in addition the following powers; namely,
 - (a) Power to enter and inspect any place or building the entry or inspection whereof appears to the Court requisite for the said purpose:
 - (b) Power, by summons signed by the Court, to require the attendance of all such persons as it thinks fit to call before it and examine for the said purpose, and for that purpose to require answers or returns to such inquiries as it thinks fit to make:
 - (c) Power to require the production of all books, papers and documents which it considers important for the said purpose:
 - (d) Power to administer an oath and require any person examined to make and sign a declaration of the truth of the statements made by him in his examination.
- (4) Persons attending as witnesses before the Court shall be allowed such expenses as would be allowed to witnesses attending before a court

of record; and in case of dispute as to the amount to be allowed, the same shall be referred by the Court to a master of one of Her Majesty's superior courts, who, on request signed by the Court, shall ascertain and certify the proper amount of the expenses:

- (5) The Court holding an investigation under this section shall make a report to the Secretary of State, stating the causes of the explosion or accident and its circumstances, and adding any observations which the Court thinks right to make:
- (6) All expenses incurred in and about an investigation under this section (including the remuneration of any person appointed to act as assessor) shall be deemed to be part of the expenses of the Secretary of State in the execution of this Act.
- (7) Any person who without reasonable excuse (proof whereof shall lie on him) either fails, after having had the expenses (if any) to which he is entitled tendered to him, to comply with any summons or requisition of a Court holding an investigation under this section, or prevents or impedes the Court in the execution of its duty, shall for every such offence be liable to a fine not exceeding ten pounds, and in the case of a failure to comply with a requisition for making any return or producing any document shall be liable to a fine not exceeding ten pounds for every day that such failure continues.

Publication of
reports.

46. The Secretary of State may cause any special report of an inspector or any report of a Court under this part of this Act to be made public at such time and in such manner as he may think fit.

The two preceding sections are reproduced in the Factory and Workshop Act, 1901, s. 22.

It was held in *Reg. v. Boiler Explosion Commissioners*, [1891] 1 Q. B. 703, that the Board of Trade had power to hold an inquiry into a boiler explosion, into which an inquiry can be held under the Coal Mines Regulation Act, 1872: sect. 4 of the Boiler Explosions Act, 1882, in so far as it prohibited such a proceeding, having been repealed by sect. 2 of the Boiler Explosions Act, 1890.

Arbitration.

Provisions as
to arbitrations.

47. With respect to arbitrations under this Act, the following provisions shall have effect:

- (1) The parties to the arbitration are in this section deemed to be the owner, agent or manager of the mine on the one hand, and the inspector of mines (on behalf of the Secretary of State) on the other:
- (2) Each of the parties to the arbitration may within fourteen days after the date of the reference, appoint an arbitrator:
- (3) No person shall act as arbitrator or umpire under this Act who is employed in or in the management of or is interested in the mine to which the arbitration relates:
- (4) The appointment of an arbitrator under this section shall be in writing, and notice of the appointment shall be forthwith sent to the other party to the arbitration, and shall not be revoked without the consent of that party:
- (5) The death, removal or other change in any of the parties to the arbitration shall not affect the proceedings under this section:

- (6) If within the said fourteen days either of the parties fails to appoint an arbitrator, the arbitrator appointed by the other party may proceed to hear and determine the matter in difference, and in that case the award of the single arbitrator shall be final :
- (7) If before an award has been made any arbitrator appointed by either party dies or becomes incapable to act, or for seven days refuses or neglects to act, the party by whom such arbitrator was appointed may appoint some other person to act in his place ; and if he fails to do so within seven days after notice in writing from the other party for that purpose, the remaining arbitrator may proceed to hear and determine the matter in difference, and in that case the award of the single arbitrator shall be final :
- (8) In either of the foregoing cases where an arbitrator is empowered to act singly, on one of the parties failing to appoint, the party so failing may, before the single arbitrator has actually proceeded in the arbitration, appoint an arbitrator, who shall then act as if no failure had occurred :
- (9) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as may have been appointed for that purpose by both arbitrators under their hands, the matter in difference shall be determined by the umpire appointed as hereinafter mentioned :
- (10) The arbitrators, before they enter on the matter referred to them, shall appoint by writing under their hands an umpire to decide on points on which they may differ :
- (11) If the umpire dies or becomes incapable of acting before he has made his award, or refuses to make his award within a reasonable time after the matter has been brought within his cognizance, the persons or person who appointed such umpire shall forthwith appoint another umpire in his place :
- (12) If the arbitrators refuse or fail or for seven days after the request of either party neglect to appoint an umpire, then on the application of either party an umpire may be appointed by the chairman of the general or quarter sessions of the peace, within the jurisdiction of which the mine or any shaft of the mine is situate :
- (13) The decision of every umpire on the matters referred to him shall be final :
- (14) If a single arbitrator fails to make his award within twenty-one days after the day on which he was appointed, the party who appointed him may appoint another arbitrator to act in his place :
- (15) Arrangements shall whenever practicable be made for the matter in difference being heard at the same time before the arbitrators and the umpire :
- (16) The arbitrators and the umpire or any of them may examine the parties and their witnesses on oath, and may also consult any counsel, engineer or scientific person whom they may think it expedient to consult :
- (17) The payment, if any, to be made to any arbitrator or umpire for his

services shall be fixed by the Secretary of State, and together with the costs of the arbitration and award shall be paid by the parties or one of them according as the award may direct. Such costs may be taxed by a master of one of Her Majesty's superior courts, who, on the written application of either of the parties, shall ascertain and certify the proper amount thereof. The amount, if any, payable by the Secretary of State shall be paid as part of the expenses of inspectors under this Act. The amount, if any, payable by the owner, agent or manager may in the event of non-payment be recovered in the same manner as fines under this Act:

- (18) Every person who is appointed an arbitrator under this section shall be a practical mining engineer, or a person accustomed to the working of mines, and every person who is appointed an umpire under this section shall be a county court judge, a police or stipendiary magistrate, a recorder of a borough, or a registrar of a county court, but when an award has been made under this section the arbitrator or umpire who made it shall be deemed to have been duly qualified as provided by this section.

SECT. 2 of the Coal Mines Regulation Act, 1896, provides for the representation of the workmen on the arbitration.

See sect. 24 of the Arbitration Act, 1889, as to its application to arbitrations under this Act.

Coroners.

Provisions as to coroners' inquests on deaths from accidents in mines.

48. With respect to coroners' inquests on the bodies of persons whose death may have been caused by explosions or accidents in or about mines, the following provisions shall have effect:

- (1) Where a coroner holds an inquest on the body of any person whose death may have been caused by any explosion or accident, of which notice is required by this Act to be given to the inspector of the district, the coroner shall adjourn the inquest unless an inspector, or some person on behalf of a Secretary of State, is present to watch the proceedings:
- (2) The coroner, at least four days before holding the adjourned inquest, shall send to the inspector for the district notice in writing of the time and place of holding the adjourned inquest:
- (3) The coroner, before the adjournment, may take evidence to identify the body, and may order the internment thereof:
- (4) If an explosion or accident has not occasioned the death of more than one person, and the coroner has sent to the inspector of the district notice of the time and place of holding the inquest at such time as to reach the inspector not less than twenty-four hours before the time of holding the same, it shall not be imperative on him to adjourn the inquest in pursuance of this section, if the majority of the jury think it unnecessary so to adjourn:
- (5) An inspector shall be at liberty at any such inquest to examine any witness, subject nevertheless to the order of the coroner:
- (6) Where evidence is given at an inquest at which an inspector is not present of any neglect as having caused or contributed to the explosion or accident, or of any defect in or about the mine appear-

ing to the coroner or jury to require a remedy, the coroner shall send to the inspector of the district notice in writing of such neglect or defect :

- (7) Any person having a personal interest in or employed in or in the management of the mine in which the explosion or accident occurred shall not be qualified to serve on the jury empannelled on the inquest; and it shall be the duty of the constable or other officer not to summon any person disqualified under this provision, and it shall be the duty of the coroner not to allow any such person to be sworn or to sit on the jury :
- (8) Any relative of any person whose death may have been caused by the explosion or accident with respect to which the inquest is being held, and the owner, agent or manager of the mine in which the explosion or accident occurred, and any person appointed by the order in writing of the majority of the workmen employed at the said mine, shall be at liberty to attend and examine any witness, either in person or by his counsel, solicitor or agent, subject nevertheless to the order of the coroner.

Every person who fails to comply with the provisions of this section shall be guilty of an offence against this Act.

PART II.

RULES.

General Rules.

Sect. 1 of the Coal Mines Regulation Act, 1896, provides for the suspension of any of these rules which are inconsistent with special rules made under that section.

49. The following general rules shall be observed, so far as is reasonably practicable (o) in every mine : General rules :

Rule 1. An adequate amount of ventilation shall be constantly produced in every mine to dilute and render harmless noxious gases to such an extent that the working places of the shafts, levels, stables, and workings of the mine, and the travelling roads to and from those working places shall be in a fit state for working and passing therein. Ventilation of mine.

In the case of mines required by this Act to be under the control of a certificated manager, the quantity of air in the respective splits or currents shall at least once in every month be measured and entered in a book to be kept for the purpose at the mine.

The last paragraph is new. The first paragraph re-enacts the old rule. In *Brough v. Homfray* (1868), L. R. 3 Q. B. 771 (decided on the same rule in 23 & 24 Vict. c. 151), it was held that it was not a compliance with the statute to ventilate the working places and travelling roads : "So much of the mine must be kept so ventilated as to render the working places and travelling roads safe." In *Hall v. Hopwood* (1879), 49 L. J. M. C. 17, a certificated manager of a coal mine, at a salary of 1*l.* a week, was charged with an offence under this section. He might have improved the ventilation with the means at his disposal ; proper ventilation required an outlay of 200*l.* Held, that he was liable to be convicted. But the Court

(o) *I.e.*, having regard to mechanical and physical difficulties, not to the profit made out of the concern : *Wales v. Thomas* (1885), 16 Q. B. D. 340.

observed that the statute does not require the manager to "spend his own money in providing the requisite machinery to secure proper ventilation." See also *Knowles v. Dickinson* (1860), 29 L. J. M. C. 135, where it was held that the ventilation must be constantly kept up, Sundays included.

Rule 2. Where a fire is used for ventilation in any mine newly opened after the passing of this Act, the return air, unless it be so diluted as not to be inflammable, shall be carried off clear of the fire by means of a dumb drift or airway.

Rule 3. Where a mechanical contrivance for ventilation is introduced into any mine after the commencement of this Act, it shall be in such position and placed under such conditions as will tend to ensure its being uninjured by an explosion.

Stations and inspection of condition as to ventilation, &c.

Rule 4. A station or stations shall be appointed at the entrance to the mine, or to different parts of the mine, as the case may require; and the following provisions shall have effect:

(i) As to inspection before commencing work:—

A competent person or competent persons appointed by the owner, agent or manager for the purpose not being contractors for getting minerals in the mine shall, within such time immediately before the commencement of each shift as shall be fixed by special rules made under this Act, inspect every part of the mine situate beyond the station or each of the stations, and in which workmen are to work or pass during that shift, and shall ascertain the condition thereof so far as the presence of gas ventilation, roof and sides, and general safety are concerned.

No workman shall pass beyond any such station until the part of the mine beyond that station has been so examined and stated by such competent person to be safe.

The inspection shall be made with a locked safety lamp, except in the case of any mine in which inflammable gas has not been found within the preceding twelve months.

A report specifying where noxious or inflammable gas (if any) was found present, and what defects (if any) in roofs or sides, and what (if any) other source of danger were or was observed, shall be recorded without delay in a book to be kept at the mine for the purpose, and accessible to the workmen, and such report shall be signed by, and so far as the same does not consist of printed matter shall be in the handwriting of the person who made the inspection.

For the purpose of the foregoing provisions of this rule, two or more shifts succeeding one another without any interval are to be deemed to be one shift.

This inspection is extended by 59 & 60 Vict. c. 43, s. 5, sub-s. (1), to "all working places in which work is temporarily stopped within any ventilating district in which the men have to work."

(ii) As to inspection during shifts:—

A similar inspection shall be made in the course of each shift of all parts of the mine in which workmen are to work or pass during that shift, but it shall not be necessary to record a report of the same in a book: Provided that in the case of a mine worked continuously throughout the twenty-four hours

by a succession of shifts, the report of one of such inspections shall be recorded in manner above required.

Rule 5. A competent person or competent persons appointed by the owner, agent or manager for the purpose, shall, once at least in every twenty-four hours, examine the state of the external parts of the machinery, the state of the guides and conductors in the shafts, and the state of the head gear, ropes, chains, and other similar appliances of the mine which are in actual use both above ground and below ground, and shall once at least in every week examine the state of the shafts by which persons ascend or descend; and shall make a true report of the result of such examination, and every such report shall be recorded without delay in a book to be kept at the mine for the purpose, and shall be signed by the person who made the inspection.

Inspection of machinery, &c. above and below ground.

Both the weekly and the daily inspection must be recorded : *Scott v. Boulton*, [1895] 1 Q. B. 9.

Rule 6. Every entrance to any place which is not in actual use or course of working and extension, shall be properly fenced across the whole width of the entrance, so as to prevent persons inadvertently entering the same.

Fencing of entrances.

Rule 7. If at any time it is found by the person for the time being in charge of the mine, or any part thereof, that by reason of inflammable gases prevailing in the mine, or that part thereof, or of any cause whatever, the mine or that part is dangerous, every workman shall be withdrawn from the mine or part so found dangerous, and a competent person appointed for the purpose shall inspect the mine or part so found dangerous, and if the danger arises from inflammable gas shall inspect the mine or part with a locked safety lamp; and in every case shall make a true report of the condition of the mine or part; and a workman shall not, except in so far as is necessary for inquiring into the cause of danger or for the removal thereof, or for exploration, be readmitted into the mine, or part so found dangerous, until the same is stated by the person appointed as aforesaid not to be dangerous. Every such report shall be recorded in a book which shall be kept at the mine for the purpose, and shall be signed by the person who made the inspection.

Withdrawal of workmen in case of danger.

Rule 8. No lamp or light other than a locked safety lamp shall be allowed or used—

Use of safety lamps in certain places.

- (a) In any place in a mine in which there is likely to be any such quantity of inflammable gas as to render the use of naked lights dangerous; or
- (b) In any working approaching near a place in which there is likely to be an accumulation of inflammable gas.

And when it is necessary to work the coal in any part of a ventilating district with safety lamps, it shall not be allowable to work the coal with naked lights in another part of the same ventilating district situated between the place where such lamps are being used and the return air-way.

Rule 9. Wherever safety lamps are used, they shall be so constructed that they may be safely carried against the air current ordinarily prevailing in that part of the mine in which the lamps are for the time being in use, even though such current should be inflammable.

Construction of safety lamps.

Examination
of safety
lamps.

Rule 10. In any mine or part of a mine in which safety lamps are required by this Act or by the special rules made in pursuance of this Act to be used—

- (i) A competent person appointed by the owner, agent or manager for the purpose, shall, either at the surface or at the appointed lamp station, examine every safety lamp immediately before it is taken into the workings for use, and ascertain it to be in safe working order and securely locked; and such lamps shall not be used until they have been so examined and found in safe working order and securely locked;
- (ii) A safety lamp shall not be unlocked except either at the appointed lamp station or for the purpose of firing a shot, in conformity with the provisions herein-after contained;
- (iii) A person, unless he has been appointed either for the purpose of examining safety lamps or for the purpose of firing shots, shall not have in his possession any contrivance for opening the lock of any safety lamp;
- (iv) A person shall not have in his possession any lucifer match or apparatus of any kind for striking a light, except within a completely closed chamber attached to the fuse of the shot.

See Coal Mines Regulation Act, 1896, s. 5, sub-s. (2), and s. 1, sub-s. (1) (a), at p. 428, *infra*.

Lamp
stations.

Rule 11. Where safety lamps are required to be used, the position of the lamp stations for lighting or re-lighting the lamps shall not be in the return air.

Use of explo-
sives below
ground.

Rule 12. Any explosive substance shall only be used in the mine below ground as follows:

- (a) It shall not be stored in the mine:
- (b) It shall not be taken into the mine, except in cartridges in a secure case or canister containing not more than five pounds:

Provided that on the application of the owner agent or manager of any mine, the Secretary of State may by order exempt such mine from so much of this rule as forbids taking an explosive substance into the mine except in cartridges.

- (c) A workman shall not have in use at one time in any one place more than one of such cases or canisters:
- (d) In the process of charging or stemming for blasting, a person shall not use or have in his possession any iron or steel pricker, scraper, charger, tamping rod, or stemmer, nor shall coal or coal dust be used for tamping (*p*):
- (e) No explosive shall be forcibly pressed into a hole of insufficient size, and, when a hole has been charged, the explosive shall not be unrammed, and no hole shall be bored for a charge at a distance of less than six inches from any hole where the charge has missed fire:

(*p*) For the last clause are to be substituted the words, “and only clay or other non-inflammable substances shall

be used for stemming, and shall be provided by the owner of the mine”: 59 & 60 Vict. c. 43, s. 5, sub-s. (3).

(f) In any place in which the use of a locked safety lamp is for the time being required by or in pursuance of this Act, or which is dry and dusty, no shot shall be fired except by or under the direction of a competent person appointed by the owner, agent or manager of the mine, and such person shall not fire the shot or allow it to be fired until he has examined both the place itself where the shot is to be fired and all contiguous accessible places of the same seam within a radius of twenty yards, and has found such place safe for firing :

(g) If in any mine, at either of the four inspections under rule 4 recorded last before a shot is to be fired, inflammable gas has been reported to be present in the ventilating district in which the shot is to be fired, the shot shall not be fired—

(1) Unless a competent person, appointed as aforesaid, has examined the place where gas has been so reported to be present, and has found that such gas has been cleared away, and that there is not at or near such place sufficient gas issuing or accumulated to render it unsafe to fire the shot ; or

(2) Unless the explosive employed in firing the shot is so used with water or other contrivance as to prevent it from inflaming gas, or is of such a nature that it cannot inflame gas :

(h) If the place where a shot is to be fired is dry and dusty, then the shot shall not be fired unless one of the following conditions is observed, that is to say—

(1) Unless the place of firing and all contiguous accessible places within a radius of twenty yards therefrom are at the time of firing in a wet state from thorough watering ^(q) or other treatment equivalent to watering, in all parts where dust is lodged, whether roof, floor, or sides ; or

(2) In the case of places in which watering would injure the roof or floor, unless the explosive is so used with water or other contrivance as to prevent it from inflaming gas or dust, or is of such a nature that it cannot inflame gas or dust :

(i) If such dry and dusty place is part of a main haulage road, or is a place contiguous thereto, and showing dust adhering to the roof and sides, no shot shall be fired there unless—

(1) Both the conditions mentioned in sub-head (h) have been observed ; or

(2) Unless such one of the conditions mentioned in sub-head (h) as may be applicable to the particular place has been observed, and moreover all workmen have been removed ^(r) from the seam in which the shot is to be fired, and from all seams communicating with the shaft on the same level, except the men engaged in firing the shot, and such other persons, not exceeding ten, as are necessarily employed in attending to the ventilating furnaces, steam boilers, engines, machinery, winding apparatus, signals, or horses, or in inspecting the mine :

^(q) See 59 & 60 Vict. c. 43, s. 1, sub-s. (1) (d).

^(r) See 59 & 60 Vict. c. 43, s. 1, sub-s. (1) (c).

- (k) In this Act "ventilating district" means such part of a seam as has an independent intake commencing from a main intake air course, and an independent return airway terminating at a main return air course; and "main haulage road" means a road which has been, or for the time being is, in use for moving trams by steam or other mechanical power;
- (l) Where a seam of a mine is not divided into separate ventilating districts the provisions in this Act relating to ventilating districts shall be read as though the word "seam" were substituted for the words "ventilating district";
- (m) So much of this rule as requires the explosive substance taken into the mine to be in cartridges, and so much of the provisions of sub-head (f) as relates to a dry and dusty place, and the provisions (g), (h), (i), (k), and (l) shall not apply to seams of clay or stratified ironstone which are not worked in connexion with any coal seam, and which contain no coal in the working.

The special definitions are new.

Under sect. 6 of the Coal Mines Regulation Act, 1896, the Secretary of State has power to prohibit the use of any dangerous explosive; and see sect. 1, sub-sect. (1) (b), *ibid.*

Water and bore holes.

Rule 13. Where a place is likely to contain a dangerous accumulation of water, the working approaching that place shall not at any point within forty yards of that place exceed eight feet in width, and there shall be constantly kept at a sufficient distance, not being less than five yards, in advance, at least one bore-hole near the centre of the working, and sufficient flank bore-holes on each side.

Signalling and man-holes for travelling planes worked by machinery.

Rule 14. Every underground plane on which persons travel, which is self-acting or worked by an engine, windlass or gin, shall be provided (if exceeding thirty yards in length) with some proper means of communicating distinct and definite signals between the stopping places and the ends of the plane, and shall be provided in every case, with sufficient man-holes for places of refuge, at intervals of not more than twenty yards, or if there is not room for a person to stand between the side of a tub and the side of the plane, then (unless the tubs are moved by an endless chain or rope) at intervals of not more than ten yards.

Man-holes for other travelling roads.

Rule 15. Every road on which persons travel underground where the load is drawn by a horse or other animal shall be provided, at intervals of not more than fifty yards, with sufficient man-holes, or with places of refuge, and every such place of refuge shall be of sufficient length, and at least three feet in width, between the wagons running on the road and the side of such road. There shall be at least two proper travelling ways into every steam engine room and boiler gallery.

Man-holes to be kept clear.

Rule 16. Every man-hole and every place of refuge shall be constantly kept clear, and no person shall place anything in any such man-hole or place of refuge.

Dimensions of travelling roads.

Rule 17. Every travelling road on which a horse or other draught animal is used underground shall be of sufficient dimensions to allow the horse or other animal to pass without rubbing against the roof or timbering.

Rule 18. The top of every shaft which for the time being is out of use, or used only as an air shaft, shall be and shall be kept securely fenced. Fencing of old shafts.

Rule 19. The top and all entrances between the top and bottom, including the sump, if any, of every working ventilating or pumping shaft shall be properly fenced, but this shall not be taken to forbid the temporary removal of the fence for the purpose of repairs or other operations, if proper precautions are used. Fencing of entrances to shafts.

Rule 20. Where the natural strata are not safe, every working or pumping shaft shall be securely cased, lined or otherwise made secure. Securing of shafts.

Rule 21. The roof and sides of every travelling road and working place shall be made secure, and a person shall not, unless appointed for the purpose of exploring or repairing, travel or work in any such travelling road or working place which is not so made secure. Securing of roofs and sides.

Rule 22. Where the timbering of the working places is done by the workmen employed therein, suitable timber shall be provided at the working place, gate end, pass bye, siding or other similar place in the mine convenient to the workmen, and the distance between the sprags or holing props where they are required (s) shall not exceed six feet or such less distance as may be ordered by the owner, agent or manager. Timbering.

Rule 23. Where there is a downcast and furnace shaft to the same seam, and both such shafts are provided with apparatus in use for raising and lowering persons, every person employed in the mine shall, on giving reasonable notice, have the option of using the downcast shaft. Option of using downcast shaft.

Rule 24. In any mine which is usually entered by means of machinery, a competent male person not less than twenty-two (t) years of age shall be appointed for the purpose of working the machinery which is employed in lowering and raising persons therein, and shall attend for that purpose during the whole time that any person is below ground in the mine. Attendance of engine-man.

Where any shaft, plane, or level is used for the purpose of communication from one part to another part of a mine, and persons are taken up or down or along such shaft, plane, or level by means of any engine, windlass, or gin, driven or worked by steam or any mechanical power, or by an animal, or by manual labour, the person in charge of such engine, windlass, or gin, or of any part of the machinery, ropes, chains, or tackle connected therewith must be a competent male person not less than eighteen (u) years of age.

Where the machinery is worked by an animal, the person under whose direction the driver of the animal acts, shall for the purposes of this rule, be deemed to be the person in charge of the machinery.

Rule 25. Every working shaft used for the purpose of drawing minerals or for the lowering or raising of persons shall, if exceeding fifty yards in depth, and not exempted in writing by the inspector of the district, be provided with guides and some proper means of communicating distinct and definite signals from the bottom of the shaft and from every entrance for the time being in use between the surface and the bottom of the shaft to the surface, and from the surface to the bottom of the shaft and to every Means of signalling for working shafts.

(s) *I.e.*, "necessary for safety," the necessity being a question of fact for the justices: *Gibbon v. Phillips* (1894), 64

L. J. M. C. 42.

(t) Raised from "eighteen."

(u) Raised from "twelve."

entrance for the time being in use between the surface and the bottom of the shaft.

Rule 26. If in any mine the winding apparatus is not provided with some automatic contrivance to prevent overwinding, then the cage, when men are being raised, shall not be wound up at a speed exceeding three miles an hour, after the cage has reached a point in the shaft to be fixed by the special rules.

Cover over-head.

Rule 27. A sufficient cover overhead shall be used for every cage or tub employed in lowering or raising persons in any working shaft, except where the cage or tub is worked by a windlass, or where persons are employed at work in the shaft, or where a written exemption is given by the inspector of the district.

Chains.

Rule 28. A single linked chain shall not be used for lowering or raising persons in any working shaft or plane except for the short coupling chain attached to the cage or tub.

Prevention of rope slipping on drum.

Rule 29. There shall be on the drum of every machine used for lowering or raising persons, such flanges or horns, and also if the drum is conical, such other appliances as may be sufficient to prevent the rope from slipping.

An information was preferred under the same sub-section in the Act of 1872 against the part owner of a coal mine, in which one of the general rules regulating the employment of machines had not been complied with. The general rules were put up in various parts of the mine, and the defendant occasionally visited the mine, but resided at a distance, and took no part in the management of the mine, which was under the exclusive control of the certificated manager, who was also part owner. The defendant was not examined as a witness, but it was admitted that he had not personally taken any means to enforce the rules. The justices found, as a fact, that the defendant had taken all reasonable means by publishing, and, to the best of his power, enforcing, the rules as regulations for the working of the mine, to prevent such non-compliance, and dismissed the information. *Held*, that there was evidence from which the justices might properly come to that conclusion: *Baker v. Carter* (1878), L. R. 3 Ex. D. 132.

Break and indicator.

Rule 30. There shall be attached to every machine worked by steam, water, or mechanical power, and used for lowering or raising persons, an adequate break (*x*) or breaks, and a proper indicator (in addition to any mark on the rope) showing to the person who works the machine the position of the cage or tub in the shaft.

If the drum is not on the crank shaft, there shall be an adequate break on the drum shaft.

Fencing machinery.

Rule 31. Every fly-wheel and all exposed and dangerous parts of the machinery used in or about the mine shall be and shall be kept securely fenced.

Safety valves and gauges for boilers.

Rule 32. Each steam boiler, whether separate or one of a range, shall have attached to it a proper safety valve, and also a proper steam gauge and water gauge, to show respectively the pressure of steam and the height of water in each boiler.

Barometer, &c.

Rule 33. A barometer and thermometer shall be placed above ground in a conspicuous position near the entrance to the mine.

(*x*) *Nimmo v. Clark* (1872), 10 M. 477. (Pumping gear, though serving the pur-

pose of a break, not a break within the Act (23 & 24 Vict. c. 151).)

Rule 34. Where persons are employed underground, ambulances or stretchers, with splints and bandages, shall be kept at the mine ready for immediate use in case of accident.

Rule 35. No person shall wilfully damage, or without proper authority remove or render useless, any fence, fencing, man-hole, place of refuge, casing, lining, guide, means of signalling, signal, cover, chain, flange, horn, break, indicator, steam gauge, water gauge, safety valve, or other appliance or thing provided in any mine in compliance with this Act.

Wilful damage.

Rule 36. Every person shall observe such directions with respect to working as may be given to him with a view to comply with this Act or the special rules in force in the mine.

Observance of directions.

Rule 37. The books mentioned in these rules shall be provided by the owner, agent or manager, and the books, or a correct copy thereof, shall be kept at the office at the mine, and any inspector under this Act, and any person employed in the mine or any one having the written authority of any inspector or person so employed, may at all reasonable times inspect and take copies of and extracts from any such books; but nothing in these rules shall be construed to impose the obligation of keeping any such book or a copy thereof for more than twelve months after the book has ceased to be used for entries therein under this Act.

Books and copies thereof.

Any report by this Act required to be recorded in a book may be partly in print (including lithograph) and partly in writing.

Rule 38. The persons employed in a mine may from time to time appoint two of their number or any two persons, not being mining engineers, who are practical working miners, to inspect the mine at their own cost, and the persons so appointed shall be allowed once at least in every month, accompanied, if the owner, agent or manager of the mine thinks fit, by himself or one or more officers of the mine, to go to every part of the mine, and to inspect the shafts, levels, planes, working places, return air-ways, ventilating apparatus, old workings, and machinery. Every facility shall be afforded by the owner, agent and manager, and all persons in the mine for the purpose of the inspection, and the persons appointed shall forthwith make a true report of the result of the inspection, and that report shall be recorded in a book to be kept at the mine for the purpose, and shall be signed by the persons who made the inspection; and if the report state the existence or apprehended existence of any danger, the owner, agent or manager shall forthwith cause a true copy of the report to be sent to the inspector of the district.

Periodical inspection on behalf of workmen.

Rule 39. No person not now employed as a coal or ironstone getter shall be allowed to work alone as a coal or ironstone getter in face of the workings until he has had two years' experience of such work under the supervision of skilled workmen, or unless he shall have been previously employed for two years in or about the face of the workings of a mine.

This rule is new.

50. Every person who contravenes or does not comply with any of the general rules in this Act, shall be guilty of an offence against this Act; and in the event of any contravention of or non-compliance with any of the said general rules in the case of any mine to which this Act applies, by any

Penalty on non-compliance with rules.

person whomsoever, the owner, agent and manager shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing the said rules as regulations for the working of the mine, to prevent such contravention or non-compliance.

A managing director did not live at the colliery, of which a certificated manager was in charge, but only occasionally visited it; he had authorised all expenditure necessary for safety, and the rules and abstract of the Act had been duly published there. *Held*, that he was "agent" so as to be liable to a penalty for breach of the general rules, but that he had "taken all reasonable means" within sect. 50 to prevent such breach: *Stokes v. Chickland* (1893), 68 L. T. (N. S.) 457. See *Baker v. Carter* (1878), 3 Ex. D. 132; *Wynne v. Forrester* (1879), 5 C. P. D. 361; *Bell v. Bruce* (1891), 55 J. P. 535; *Dickinson v. Fletcher* (1870), L. R. 9 C. P. 1 (decided on 23 & 24 Viet. c. 151, s. 22). See also *Jones v. Robson*, [1901] 1 Q. B. 673. In *Stokes v. Mitcheson*, [1902] 1 K. B. 857, an "agent" had appointed a manager and under-manager, in consequence of whose casual negligence a rule was broken; there was no evidence of personal negligence on the agent's part, nor was the breach of the rule due to the agent's omission to enforce the rules. *Held*, that the justices were entitled to dismiss the information.

Special Rules.

Special rules
for every
mine.

51.—(1) There shall be established in every mine such rules (referred to in this Act as special rules) for the conduct and guidance of the persons acting in the management of such mine or employed in or about the mine as, under the particular state and circumstances of such mine, may appear best calculated to prevent dangerous accidents, and to provide for the safety, convenience and proper discipline of the persons employed in or about the mine.

(2) Such special rules, when established, shall be signed in duplicate by the inspector who is inspector of the district at the time the rules are established, and shall be observed in and about every such mine, (including any extension thereof) in the same manner as if they were enacted in this Act.

By sect. 1, sub-sect. (2) of 59 & 60 Viet. c. 43, any special rule established under this Act is suspended if inconsistent with any special rule made under that section.

(3) If any person who is bound to observe the special rules established for any mine, acts in contravention of or fails to comply with any of them, he shall be guilty of an offence against this Act, and also the owner, agent and manager of such mine shall each be guilty of an offence against this Act unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing the rules as regulations for the working of the mine, so as to prevent such contravention or non-compliance.

By a special rule made under the same section in the Act of 1872, no person "employed in or about the works" "shall go down or up, or into the pit, contrary to the directions of the banksman or the hooker-on." The workmen had power to terminate their contracts at a moment's notice. Being dissatisfied with their working places, certain workmen in the pit gave notice of their intention to leave at once. They asked the hooker-on to allow them to ascend, but he refused to do so until the usual time for workmen to quit the mine. The workmen ascended, contrary to his directions. They were held guilty of a breach of the special rule: *Higham v. Wright* (1877), L. R. 2 C. P. D. 397.

Establishment
of new special
rules.

52.—(1) The owner, agent or manager of every mine shall frame and transmit to the inspector of the district, for approval by a Secretary of State,

special rules for the mine within three months after the commencement of this Act, or within three months after the commencement (if subsequent to the commencement of this Act) of any working for the purpose of opening a new mine or of renewing the working of an old mine.

(2) The proposed special rules, together with a printed notice specifying that any objection to the rules on the ground of anything contained therein or omitted therefrom may be sent by any of the persons employed in the mine to the inspector of the district, at his address, stated in the notice, shall, during not less than two weeks before the rules are transmitted to the inspector, be posted up in like manner as is provided in this Act respecting the publication of special rules for the information of persons employed in the mine, and a certificate that the rules and notice have been so posted up shall be sent to the inspector with two copies of the rules, signed by the person sending the same.

(3) If the rules are not objected to by the Secretary of State within forty days after their receipt by the inspector, they shall be established.

53.—(1) If the Secretary of State is of opinion that the proposed special rules so transmitted, or any of them, do not sufficiently provide for the prevention of dangerous accidents in the mine, or for the safety or convenience of the persons employed in or about the mine, or are unreasonable, he may, within forty days after the rules are received by the inspector, object to the rules, and propose to the owner, agent or manager in writing any modifications in the rules by way either of omission, alteration, substitution or addition.

Secretary of State may object to special rules.

(2) If the owner, agent or manager does not, within twenty days after the modifications proposed by the Secretary of State are received by him, object in writing to them, the proposed special rules, with those modifications, shall be established.

(3) If the owner, agent or manager sends his objection in writing within the said twenty days to the Secretary of State, the matter shall be referred to arbitration under this Act, and the date of the receipt of the objection by the Secretary of State shall be deemed to be the date of the reference, and the rules shall be established as settled by an award on arbitration.

54.—(1) After special rules are established under this Act in any mine, the owner, agent or manager of the mine may from time to time propose in writing to the inspector of the district, for the approval of a Secretary of State, any amendment of the rules or any new special rules, and the provisions of this Act with respect to the original special rules shall apply to all such amendments and new rules in like manner, as nearly as may be, as they apply to the original rules.

Amendment of special rules.

(2) A Secretary of State may from time to time propose in writing to the owner, agent or manager of the mine any new special rules, or any amendment of the special rules, and the provisions of this Act with respect to a proposal of a Secretary of State for modifying the special rules transmitted by the owner, agent or manager of a mine shall apply to all such new special rules and amendments in like manner, as nearly as may be, as they apply to the proposal.

55. If the owner, agent or manager of any mine makes any false statement with respect to the posting up of the rules and notices, he shall be

False statements, and neglect to

transmit
special rules.

guilty of an offence against this Act; and if special rules for any mine are not transmitted within the time limited by this Act to the inspector for the approval of a Secretary of State, the owner, agent and manager of such mine shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means, by enforcing to the best of his power the provisions of this Act, to secure the transmission of the rules.

Certified copy
of special
rules to be
evidence.

56. An inspector under this Act shall, when required, certify a copy which is shown to his satisfaction to be a true copy of any special rules which for the time being are established under this Act in any mine, and a copy so certified shall be evidence (but not to the exclusion of other proof) of such special rules and of the fact that they are duly established under this Act and have been signed by the inspector.

Publication of Abstract of Act and of Special Rules.

Publication
of abstract of
Act and copy
of special
rules.

57. For the purpose of making known the provisions of this Act and the special rules to all persons employed in and about each mine, an abstract of this Act supplied, on the application of the owner, agent or manager of the mine, by the inspector of the district on behalf of a Secretary of State, and a correct copy of all the special rules shall be published as follows:

- (1) The owner, agent or manager of the mine shall cause the abstract and copy of the rules, with the name of the mine and the name and address of the inspector of the district, and the name of the owner or agent and of the manager appended thereto, to be posted up in legible characters, in some conspicuous place at or near the mine, where they may be conveniently read by the persons employed; and so often as the same become defaced, obliterated or destroyed, shall cause them to be renewed with all reasonable despatch:
- (2) The owner, agent or manager shall supply a printed copy of the abstract and the special rules gratis to each person employed in or about the mine who applies for a copy at the office at which the persons immediately employed by the owner, agent or manager are paid:
- (3) Every copy of the special rules shall be kept distinct from any rules which depend only on the contract between the employer and employed.

In the event of any non-compliance with the provisions of this section by any person whomsoever, the owner, agent and manager shall each be guilty of an offence against this Act; but the owner, agent or manager of such mine shall not be deemed guilty if he proves that he had taken all reasonable means, by enforcing to the best of his power the observance of this section, to prevent such non-compliance.

Pulling down
or defacing
notices.

58. Every person who pulls down, injures, or defaces any abstract, notice, proposed special rules, or special rules when posted up in pursuance of the provisions of this Act, or any notice posted up in pursuance of the special rules, shall be guilty of an offence against this Act.

PART III.

SUPPLEMENTAL.

Legal Proceedings.

59.—(1) Every person employed in or about a mine, other than an owner, agent or manager, who is guilty of any act or omission which in the case of an owner, agent or manager would be an offence against this Act, shall be deemed to be guilty of an offence against this Act. Penalty for offences against Act.

(2) Every person who is guilty of an offence against this Act, for which a penalty is not expressly prescribed, shall be liable to a fine not exceeding, if he is an owner, agent or manager or under-manager, twenty pounds, and if he is any other person, two pounds, for each offence; and if an inspector has given written notice of any such offence, to a further fine not exceeding one pound for every day after such notice that such offence continues to be committed.

One of several owners may be proceeded against for penalties: *R. v. Brown* (1857), 7 E. & B. 757.

60. Where a person who is an owner, agent, manager or under-manager of or a person employed in or about a mine is guilty of any offence against this Act which, in the opinion of the Court that tries the case, is one which was reasonably calculated to endanger the safety of the persons employed in or about the mine, or to cause serious personal injury to any of such persons, or to cause a dangerous accident, and was committed wilfully by the personal act, personal default, or personal negligence of the person accused, such person shall be liable, if the Court is of opinion that a fine will not meet the circumstances of the case, to imprisonment, with or without hard labour, for a period not exceeding three months. Imprisonment for wilful neglect endangering life or limb.

61.—(1) All offences under this Act not declared to be misdemeanours, and all fines under this Act, and all money and costs by this Act directed to be recovered as fines, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts before a court of summary jurisdiction. Summary proceedings for offences, fines, &c.

(2) Proceedings for the removal of a check weigher shall be deemed to be a matter on which a court of summary jurisdiction has authority by law to make an order in pursuance of the Summary Jurisdiction Acts; and summary orders under this Act may be made on complaint before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

62. In every part of the United Kingdom the following provisions shall have effect: General provisions as to summary proceedings.

- (i) Any complaint or information made or laid in pursuance of this Act shall (save as otherwise expressly provided by this Act) be made or laid within three months from the time when the matter of the complaint or information arose:
- (ii) Any person charged with an offence under this Act, may, if he thinks fit, be sworn and examined as an ordinary witness in the case:
- (iii) The Court shall, if required by either party, cause minutes of the evidence to be taken and preserved.

Appeal to
quarter
sessions.

63. If any person feels aggrieved by any conviction made by a court of summary jurisdiction on determining any information under this Act, by which conviction imprisonment or a fine amounting to or exceeding one half the maximum fine, is adjudged, he may appeal therefrom to a court of quarter sessions in manner provided by the Summary Jurisdiction Acts.

An information for breach of a general rule under this Act was dismissed. By the Summary Jurisdiction Act, 1879, s. 33, "any person aggrieved" by the justices' conviction order or determination may apply for the statement of a special case. The informant applied. *Held*, that having regard to sub-sect. (2) of sect. 33 aforesaid, and the incorporation therewith of sect. 2 of the Summary Jurisdiction Act, 1857, the appeal could be entertained: *Stokes v. Mitcheson*, [1902] 1 K. B. 857.

Liability for
misrepresenta-
tion as to
age, &c.

64. If it appears that a boy or girl was employed on the representation of his or her parent or guardian that he or she was of the age at which his or her employment would not be in contravention of this Act, and under the belief in good faith that he or she was of that age, or that a person has worked alone as a coal or ironstone getter on his representation that he has had two years' experience of such work under the supervision of skilled workmen, or that he has been previously employed for two years in or about the face of the workings of a mine, and under the belief in good faith that he has had such experience or has been so previously employed, the owner, agent or manager of the mine and employer shall be exempted from any penalty, and the parent or guardian or the person who has so worked alone, as the case may be, shall, for the misrepresentation, be deemed guilty of an offence against this Act.

This section is new.

Prosecution
of owners,
agents,
managers, &c.

65. No prosecution shall be instituted against the owner, agent, manager or under manager of a mine for any offence under this Act, not committed personally by such owner, agent, manager or under manager, which can be prosecuted before a court of summary jurisdiction, except by an inspector or with the consent in writing of a Secretary of State; and in the case of any offence of which the owner, agent, manager or under manager of a mine is not guilty if he proves that he had taken all reasonable means to prevent the commission thereof, an inspector shall not institute any prosecution against such owner, agent, manager or under manager, if satisfied that he had taken such reasonable means as aforesaid. No prosecution shall be instituted against a coroner for any offence under this Act except with the consent in writing of a Secretary of State.

Report of
result of pro-
ceedings
against
workmen.

66. Where the owner, agent or manager of a mine has taken proceedings under this Act against any person employed in or about a mine in respect of an offence committed under this Act, he shall, within twenty-one days after the hearing of the case, report the result thereof to the inspector of the district.

Summary
proceedings
for offences
in Scotland.

67. In Scotland the following provisions shall have effect:

- (1) The court of summary jurisdiction when hearing and determining an information or complaint shall be the sheriff;
- (2) All jurisdictions, powers and authorities necessary for the court of summary jurisdiction under this Act are hereby conferred on that Court:

- (3) Every person found liable under this Act by a court of summary jurisdiction in any fine, or to pay any money or costs by this Act directed to be recovered as fines, shall be liable in default of immediate payment to be imprisoned for a term not exceeding three months, and the conviction and warrant may be in the form of No. 3 of Schedule K of the Summary Procedure Act, 1864 :
- (4) Any fine exceeding fifty pounds shall be recovered and enforced in the same manner in which any penalty due to Her Majesty under any Act of Parliament may be recovered and enforced :
- (5) An appeal shall not lie from any conviction made by a sheriff, save to the next circuit court, or where there are no circuit courts, to the High Court of Justice at Edinburgh, in the manner prescribed by such of the provisions of the Act of the twentieth year of the reign of King George the Second, chapter forty-three, and any Acts amending the same, as relate to appeals in matters criminal, and by and under the rules, limitations, conditions and restrictions contained in the said provisions.

68.—(1) Nothing in this Act shall prevent any person from being indicted or liable under any other Act or otherwise to any other or higher penalty or punishment than is provided for any offence by this Act, so, however, that no person be punished twice for the same offence.

Saving for proceedings under other Acts.

(2) If the Court before whom a person is charged with an offence under this Act think that proceedings ought to be taken against such person for such offence under any other Act or otherwise, the Court may adjourn the case to enable such proceedings to be taken.

69. A person who is the owner, agent or manager of any mine, or a miner or miner's agent, or the father, son or brother, or father-in-law, son-in-law or brother-in-law, of such owner, agent or manager, or of a miner or miner's agent, or who is a director of a company being the owner of a mine, shall not, except with the consent of both parties to the case, act as a court or member of a court of summary jurisdiction in respect of any offence under this Act.

Owner of mine, &c. not to act as justice, &c. in proceedings under this Act.

70. Where a fine is imposed under this Act for neglecting to send a notice of any explosion or accident or for any offence against this Act which has occasioned loss of life or personal injury, a Secretary of State may (if he thinks fit) direct such fine to be paid to or distributed among the persons injured, and the relatives of any persons whose death may have been occasioned by the explosion, accident or offence, or among some of them.

Application of fines.

Provided that—

- (i) Such persons did not in his opinion occasion or contribute to occasion the explosion or accident, and did not commit and were not parties to committing the offence :
- (ii) The fact of the payment or distribution shall not in any way affect or be receivable as evidence in any legal proceeding relative to or consequential on the explosion, accident or offence.

Save as aforesaid—

All fines recovered in England or Scotland under this Act shall be paid into the receipt of Her Majesty's Exchequer, and shall be carried to the Consolidated Fund ;

14 & 15 Vict.
c. 90.

All fines recovered in Ireland under this Act shall be applied in manner directed by the Fines Act (Ireland), 1851, and any Act amending the same.

Miscellaneous.

Decision of
question
whether a
mine is under
this Act.

71. If any question arises (otherwise than in legal proceedings) whether a mine is a mine to which this Act or the Metalliferous Mines Regulation Act, 1872, or any other Act for the time being in force and relating to metalliferous mines applies, the question shall be referred to a Secretary of State, whose decision thereon shall be final.

Powers of
Secretary of
State as to
making and
revoking
orders.

72. Any order of or exemption granted by a Secretary of State under this Act may be made, and from time to time revoked, or altered by a Secretary of State, either unconditionally or subject to such conditions as he may see fit, and shall be signed by a Secretary of State or under secretary or assistant under secretary.

Service of
notices.

73. All notices under this Act shall (unless expressly required to be in print) be either in writing or print (including lithograph), or partly in writing and partly in print (including lithograph), and all notices and documents required by this Act to be served or sent by or to an inspector may be either delivered personally, or served and sent by post by a prepaid letter; and, if served or sent by post, shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service or sending it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post.

Application
of 38 & 39
Vict. c. 55,
s. 38.

74. Section thirty-eight of the Public Health Act, 1875 (which relates to privy accommodation for any house used as a factory or building in which both sexes are employed), shall apply to the portions of a mine which are above ground, and in which girls and women are employed, in like manner as if it were herein re-enacted with the substitution of "those portions of the mine" for the house in the said section mentioned.

Interpretation
of terms.

75. In this Act, unless the context otherwise requires,—

"Mine" includes every shaft in the course of being sunk, and every level and inclined plane in the course of being driven, and all the shafts, levels, planes, works, tramways, and sidings, both below ground and above ground, in and adjacent to and belonging to the mine:

"Shaft" includes pit:

"Plan" includes a correct copy or tracing of any original plan:

"Owner," when used in relation to any mine, means any person or body corporate who is the immediate proprietor or lessee, or occupier of any mine, or of any part thereof, and does not include a person or body corporate who merely receives a royalty, rent, or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant, or license, but any contractor for the working of any mine, or any part thereof, shall be subject to this Act in like manner as if he were an owner, but so as not to exempt the owner from any liability:

See *Stott v. Dickinson* (1876), 34 L. T. (N. S.) 291.

“Agent,” when used in relation to any mine, means any person appointed as the representative of the owner in respect of any mine, or of any part thereof, and as such superior to a manager appointed in pursuance of this Act :

See *Stokes v. Mellor* (1875), 39 J. P. 788.

“Secretary of State” means one of Her Majesty’s Principal Secretaries of State :

“The Treasury” means the Commissioners of Her Majesty’s Treasury :

“Boy” means a male under the age of sixteen years (*y*) :

“Girl” means a female under the age of sixteen years (*y*) :

“Woman” means a female of the age of sixteen years or upwards.

76. In the application of this Act to Scotland—

Application
of Act to
Scotland.

- (1) The term “Attorney General” means the Lord Advocate :
- (2) The term “injunction” means interdict :
- (3) The term “misdemeanour” means “crime and offence” :
- (4) The term “chairman of quarter sessions” means the sheriff of the county :
- (5) The term “sheriff” includes sheriff substitute :
- (6) The term “attending on subpoena before a court of record” means attending on citation the Court of Justiciary :
- (7) The auditor of the sheriff court of the county or district of a county in which any inquiry takes place shall perform the duties of a master of one of the superior courts under this Act :
- (8) “County court judge, police magistrate, stipendiary magistrate, recorder, or registrar of a county court” means a sheriff or a sheriff substitute :
- (9) Notices of explosions, accidents, loss of life, or personal injury shall be deemed to be sent to the inspector of the district on behalf of the Lord Advocate :
- (10) Sections forty-one and sixteen of the Public Health (Scotland) Act, 1867, shall respectively be substituted for sections thirty-eight and ninety-one of the Public Health Act, 1875.
- (11) The term “public elementary school” means State-aided school.

Nothing in this Act shall affect any provision in the Education (Scotland) Acts, 1872 to 1883.

77. In the application of this Act to Ireland,—

Application
of Act to
Ireland.

- (a) The expression “the Summary Jurisdiction Acts” means, as regards the Dublin metropolitan police district, the Acts regulating the powers and duties of justices of the peace and of the police of that district, and elsewhere, in Ireland, the Petty Sessions (Ireland) Act, 1851, and the Acts amending the same.
- (b) In hearing and determining a charge under this Act, a court of summary jurisdiction elsewhere than in the Dublin metropolitan police district, shall be constituted of two or more justices of the peace or of a resident magistrate, with or without other justices, sitting in petty sessions ; and a resident magistrate means a magistrate

(*y*) See note on s. 4, *supra*.

appointed pursuant to the Act of the session of the sixth and seventh years of the reign of King William the Fourth, chapter fourteen :

41 & 42 Vict.
c. 52.

(c) Sections forty-eight and one hundred and seven of the Public Health (Ireland) Act, 1878, shall respectively be substituted for sections thirty-eight and ninety-one of the Public Health Act, 1875.

(d) The expression "police or stipendiary magistrate" means resident magistrate :

"Master of one of Her Majesty's Superior Courts" means a taxing master of the High Court of Justice in Ireland :

"Registrar of a county court" means clerk of the peace :

"London Gazette" means Dublin Gazette :

"Attorney-General" means Attorney-General for Ireland :

"Chairman of quarter sessions" means county court judge.

Transitory Provisions and Repeal.

Existing
inspectors and
examining
boards
continued.

78. The persons who at the commencement of this Act are acting as inspectors under the Acts hereby repealed, and the boards for appointing examiners for manager's certificates under those Acts, shall continue to act in the same manner, and generally to be in the same position, as if they had been respectively appointed under this Act.

Existing
certificates
and registers
continued.

79. All orders made by a Secretary of State under any Act repealed by this Act, which are in force immediately before the commencement of this Act, shall be deemed to have been made under this Act^(z); and all certificates of competency or of service granted under any Act repealed by this Act which are in force immediately before the commencement of this Act, shall be deemed to be first class certificates granted under this Act; and the register of holders of certificates, and the other registers which at the commencement of this Act are kept in pursuance of the Acts hereby repealed, shall be deemed to be registers or parts of registers kept in pursuance of this Act.

Grant of
certificates of
service in case
of certain
under
managers.

80.—(1) A certificate of service shall be granted by a Secretary of State to every person who satisfies him either that before the passing of this Act he was exercising, and has since that date exercised, or that he has at any time within five years before the passing of this Act for a period of not less than twelve months exercised, functions substantially corresponding to those of an under manager in a mine.

(2) Every such certificate of service shall contain particulars of the name, place, and time of birth, and the length and nature of the previous service of the person to whom the same is delivered, and a certificate of service may be refused to any person who fails to give a full and satisfactory account of the particulars aforesaid, or to pay such registration fee as the Secretary of State may direct, not exceeding that mentioned in the Second Schedule to this Act.

(3) A certificate of service granted under this section shall have the same

(z) See *Dickinson v. Handsley* (1889), 60 L. T. (N. S.) 567, and note on sect. 12, sub-sect. (3), *supra*.

effect for the purposes of this Act as a second class certificate of competency granted under this Act.

Sections 81 and 82 are spent.

83. Any enactment or document referring to any Act repealed by this Act, or to any enactment thereof, shall be construed to refer to this Act, and to the corresponding enactments thereof.

Construction of references to repealed Acts.

84. The Acts described in Schedule Four to this Act are hereby repealed.

Repeal of Acts.

Provided that this repeal shall not affect any exemption granted, or other thing done or suffered before the commencement of this Act; and all offences committed and penalties incurred and proceedings commenced before the commencement of this Act may be punished, recovered, continued and completed in the same manner as if this Act had not passed.

As to repealing Acts passed since January 1, 1890, see Interpretation Act, 1889, s. 38.

SCHEDULES.

SCHEDULE ONE.

Section 24.

PROCEEDINGS OF BOARD FOR EXAMINATIONS.

1. The board shall meet for the despatch of business, and shall from time to time make such regulations with respect to the summoning, notice, place, management and adjournment of such meetings, and generally with respect to the transaction and management of business, including the quorum at meetings of the board, as they think fit, subject to the following conditions:—

- (a) Any regulations made by the board constituted under the Acts repealed by this Act, and in force at the commencement of this Act, shall continue in force till repealed or altered by the board;
- (b) An extraordinary meeting may be held at any time on the written requisition of three members of the board addressed to the chairman;
- (c) The quorum to be fixed by the board shall consist of not less than three members;
- (d) Every question shall be decided by a majority of votes of the members present and voting on that question;
- (e) The names of the members present, as well as those voting upon each question, shall be recorded;
- (f) No business shall be transacted unless notice in writing of such business has been sent to every member of the board seven days at least before the meeting.

2. The board shall from time to time appoint some person to be chairman, and one other person to be vice-chairman.

3. If at any meeting the chairman is not present at the time appointed for holding the same, the vice-chairman shall be the chairman of the meeting, and if neither the chairman nor vice-chairman shall be present, then the members present shall choose some one of their number to be chairman of such meeting.

4. In case of an equality of votes at any meeting, the chairman for the time being of such meeting shall have a second or casting vote.

5. The appointment of an examiner may be made by a minute of the board signed by the chairman.

6. The board shall keep minutes of their proceedings, which may be inspected or copied by a Secretary of State, or any person authorised by him to inspect or copy the same.

Sections 25
and 30.

SCHEDULE TWO.

TABLE OF MAXIMUM FEES TO BE PAID IN RESPECT OF CERTIFICATES.

First Class Certificate.

By an applicant for examinationTwo pounds.
For copy of certificate.....Five shillings.

Second Class Certificate.

By an applicant for examinationOne pound.
For copy of certificate.....Two shillings and sixpence.

Section 33.

SCHEDULE THREE.

Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58).

FORM OF RETURN.

This Form to be correctly filled up, by the Owner, Agent or Manager, and sent to the Inspector of the District, on behalf of the Secretary of State, on or before 21st January, every year.

PART A.

YEAR ENDING 31ST DECEMBER, 19 .

Name of Mine ———.
Situation of Mine ———.
County ———.
Name of Owner (Company) ———.
Name of Manager ———.
Name of Under Manager ———.
Postal Address ———.

RETURN OF PERSONS ORDINARILY EMPLOYED DURING THE YEAR.

Under ground	Boys of 12 and under 16	
	Males above 16	
	Total under ground..	
Above ground (including those employed on sidings and private branch railways and tramways, and in cleaning, washing, and coking of coal).	Boys of 12 and under 13	
	Girls do.	
	Boys of 13 and under 16	
	Girls do.	
	Females above 16	
	Males do.	
	Total above ground..	
	Total number of persons employed under ground and above ground....	

Section 84.

SCHEDULE FOUR.

REPEAL.

Date of Act.	Title of Act.	Extent of Repeal.
35 & 36 Vict. c. 76 [1872]	The Coal Mines Regulation Act, 1872.	The whole Act.
44 & 45 Vict. c. 26 [1881]	The Stratified Ironstone Mines (Gunpowder) Act, 1881.	The whole Act.
49 & 50 Vict. c. 40 [1886]	The Coal Mines Act, 1886.	The whole Act.

57 & 58 VICT. c. 52 (1894).

An Act to amend the Provisions of the Coal Mines Regulation Act, 1887, with respect to Check Weighers.

Penalty for interfering with office of check weigher.

1. If the owner, agent or manager of any mine, or any person employed by or acting under the instructions of any owner, agent or manager, interferes with the appointment of a check weigher, or refuses to afford proper facilities for the holding of any meeting for the purpose of making such appointment, in any case in which the persons entitled to make the appointment do not possess or are unable to obtain a suitable meeting place, or attempts, whether by threats, bribes, promises, notice of dismissal, or otherwise howsoever, to exercise improper influence in respect of such appointment, or to induce the persons entitled to appoint a check weigher, or any of them, not to re-appoint a check weigher, or to vote for or against any particular person or class of persons in the appointment of a check weigher, such owner, agent or manager shall be guilty of an offence against the Coal Mines Regulation Act, 1887.

50 & 51 Vict. c. 58.
Short title.

2. This Act may be cited as the Coal Mines (Check Weigher) Act, 1894.

See sect. 13 of the principal Act, *supra*.
As to penalties, see p. 419, *supra*.

59 & 60 VICT. c. 43 (1896).

An Act to amend the Coal Mines Regulation Act, 1887.

Special rules.
50 & 51 Vict. c. 58.

1.—(1) The power to propose, amend, and modify special rules for a mine under the Coal Mines Regulation Act, 1887 (*a*) (in this Act referred to as

(*a*) See sect. 51.

the principal Act), shall include powers with respect to any of the following matters:—

- (a) The nature and description of the lights or lamps to be used in the mine, and their custody and the mode of using and trimming them; and
- (b) the description of explosives to be used in the mine, the mode of using and of storing such explosives, and of making and stemming holes, and the times at which and the manner in which shots are to be fired in the mine; and
- (c) the number or class of persons, if any, to be permitted to remain in the mine or any part thereof whilst shots are being fired; and
- (d) the watering or efficient damping of the mine or any ways or places therein; and
- (e) generally the precautions to be adopted for the prevention of accidents from inflammable gas and coal dust.

(2) While any special rules made under this section are in force in any mine, any general rule contained in section forty-nine of the principal Act, and any special rule established under the principal Act, shall, if and so far as it is inconsistent with any special rules made under this section, be suspended in relation to that mine.

2. Where any matter in difference is referred to arbitration under the principal Act (*b*), a majority of the workmen employed in the mine to which the arbitration relates may, on giving such security, if any, as may appear to the arbitrators or umpire sufficient to provide for the costs occasioned by such representation, appoint any person to represent the workmen, or any class of them, on the arbitration, and any person so appointed shall be entitled to attend and take part in the proceedings of the arbitration to such extent and in such manner as the arbitrators or umpire may direct, and be subject to the same liability with respect to costs so occasioned as if he were a party to the arbitration.

Representation of workmen on arbitration.

3. The plan required to be kept in pursuance of section thirty-four of the principal Act shall show the position of the workings therein mentioned with regard to the surface, and the position, extension, and direction of every known fault or dislocation of the seam with its vertical throw.

Plan of mine in working.

4.—(1) For sub-sections (1) and (2) of section thirty-eight of the principal Act shall be substituted the following sub-sections:—

Plan of abandoned mine.

“(1) Where any mine or seam is abandoned, the person who is owner of the mine or seam at the time of its abandonment shall, within three months after the abandonment, send to a Secretary of State:

(i) An accurate plan of the mine or seam, being either the original working plan or an accurate copy thereof made by a competent draftsman, and showing—

- (a) the boundaries of the workings of the mine or seam, including not only the working faces but also all headings in advance thereof, up to the time of the abandonment;
- (b) the pillars of coal or other mineral remaining unworked;

(b) See sect. 47.

- (c) the position, direction, and extent of every known fault or dislocation of the seam with its vertical throw ;
- (d) the position of the workings with regard to the surface boundary ;
- (e) the general direction and rate of dip of the strata ; and
- (f) a statement of the depth of the shaft from the surface to the seam abandoned ; and

(ii) A section of the strata sunk through, or, if that is not reasonably practicable, a statement of the depth of the shaft with a section of the seam.

“ Every such plan must be on a scale of not less than that of the Ordnance Survey of twenty-five inches to the mile, or on the same scale as the plan used at the mine at the time of its abandonment, and its accuracy must be certified, so far as is reasonably practicable, by a surveyor or other person approved in that behalf by an inspector of mines.

“(2) The plan and section shall be preserved under the care of the Secretary of State ; but no person, except an inspector under this Act, shall be entitled without the consent of the owner of the mine or seam, or the licence of a Secretary of State, to see the plan when so sent until after the expiration of ten years from the time of the abandonment. Provided that such licence shall not be granted unless the Secretary of State is satisfied that the inspection of such plan is necessary in the interests of safety.”

(2) The High Court, or, in Scotland, the Court of Session, may, on application by or on behalf of the Secretary of State, make an order requiring any person who has, for the time being, the custody or possession of any plan or section of an abandoned mine or seam to produce it to the Secretary of State for the purpose of inspection or copying.

Amendment of
general rules
as to lamps,
inspection and
tamping.

5.—(1) The inspection before the commencement of work required by Rule 4 (i) contained in section forty-nine of the principal Act, shall extend to all working places in which work is temporarily stopped within any ventilating district in which the men have to work.

(2) A safety lamp shall not be used in any mine or part of a mine by any person employed therein unless it is provided by the owner of the mine, and no portion of any safety lamp shall be removed by any person from the mine while the lamp is in ordinary use.

(3) In Rule 12 of the general rules contained in section forty-nine of the principal Act, for the words “ nor shall coal or coal dust be used for tamping ” shall be substituted the words “ and only clay or other non-inflammable substances shall be used for stemming, and shall be provided by the owner of the mine.”

Provision as to
explosives.

6. A Secretary of State on being satisfied that any explosive is or is likely to become dangerous, may, by order, of which notice shall be given in such manner as he may direct (c), prohibit the use thereof in any mine, or in any class of mines, either absolutely or subject to conditions, and the provisions

(c) This provision as to notice is merely directory, and not a condition precedent to the validity of the order ; the fact of the order having been made is

sufficient evidence that the Secretary of State was satisfied as to the likelihood of the explosive becoming dangerous : *Jones v. Robson*, [1901] 1 Q. B. 673.

of the principal Act as to contraventions of general rules (*d*) shall apply to contraventions of any such prohibitions.

See the Explosives in Coal Mines Order of Dec. 17, 1906 (St. R. & O. 1906, p. 427).

7. This Act may be cited as the Coal Mines Regulation Act, 1896, and the principal Act and the Coal Mines (Check Weigher) Act, 1891, and this Act may be cited collectively as the Coal Mines Regulation Acts, 1887 to 1896. Short title.
57 & 58 Vict.
c. 52.

63 & 64 VICT. c. 21 (1900).

An Act to prohibit Child Labour Underground in Mines.

1.—(1) A boy under the age of thirteen years shall not be employed in or allowed to be for the purpose of employment in any mine below ground, and accordingly sections four and five of the Coal Mines Regulation Act, 1887, and section four of the Metalliferous Mines Regulation Act, 1872, shall be read and have effect as if for the word "twelve" the word "thirteen" were substituted therein. Prohibition of
employment
of boys under
thirteen below
ground.
50 & 51 Vict.
c. 58.
35 & 36 Vict.
c. 77.

(2) Nothing in this section shall apply to any boy who has been lawfully employed in any mine below ground before the passing of this Act.

2. This Act may be cited as the Mines (Prohibition of Child Labour Underground) Act, 1900. Short title.

3 EDW. VII. c. 7 (1903).

An Act to amend the Coal Mines Regulation Act, 1887.

1. From and after the passing of this Act, section twenty-three, sub-section one, of the Coal Mines Regulation Act, 1887, shall be read and construed as if the words following were added thereto at the end of the said sub-section, viz. :— Amendment
of 50 & 51
Vict. c. 58,
s. 23 (1).

"Or unless he has received a diploma in scientific and mining training after a course of study of at least two years at any university, university college, mining school, or other educational institution to be approved of by a Secretary of State, or has taken a degree of any university to be so approved of which includes scientific and mining subjects, and has also had practical experience in a mine for at least three years. The approval of the Secretary of State shall be signified in writing under his hand, and may be given subject to such conditions as he may think fit, and may be revoked at any time."

2. This Act may be cited as the Coal Mines Regulation Act (1887) Amendment Act, 1903. Short title.

(*d*) See sects. 50 and 59.

57 & 58 VICT. c. 42 (1894).

An Act to provide for the better Regulation of Quarries.

Application of Act.

1. This Act shall apply to every place (not being a mine)(*e*) in which persons work in getting slate, stone, coprolites, or other minerals, and any part of which is more than twenty feet deep, and every such place is in this Act referred to as a quarry under this Act.

Application to quarries of certain provisions of 35 & 36 Vict. c. 77; 38 & 39 Vict. c. 39; 51 & 55 Vict. c. 47.

2.—(1) The provisions of Metalliferous Mines Regulation Acts, 1872 and 1875, and the Metalliferous Mines (Isle of Man) Act, 1891, specified in the schedule to this Act, shall, subject to the modifications therein specified, apply in the case of every quarry under this Act in like manner as they apply in the case of a mine.

(2) The inspectors under the Metalliferous Mines Regulation Acts, 1872 and 1875, shall be inspectors of the quarries under this Act.

(3) In the appointment of such inspectors in Wales and Monmouthshire among candidates equally qualified persons having a knowledge of the Welsh language shall be preferred.

Modifications of application of Factory Acts to quarries.

3. In the application of the Factory and Workshop Acts, 1878 to 1891 (*f*), and of any future Act amending the same, to quarries under this Act the following modifications shall be made:—

(a) In every such quarry the powers of the inspectors under those Acts shall be transferred to and exercised by the inspectors under the Metalliferous Mines Regulation Acts, 1872 and 1875.

(b) Sections thirty-one and thirty-two of the Factory and Workshops Act, 1878 (*g*), shall not apply to any such quarry.

(c) Nothing in section fifty-eight of the Factory and Workshop Act, 1878 (*h*), shall prevent the employment in any such quarry of young persons in three shifts for not more than eight hours each.

Commencement of Act.

4. This Act shall come into operation on the first day of January, one thousand eight hundred and ninety-five.

Short title.

5. This Act may be cited as the Quarries Act, 1894.

SCHEDULE.

Provisions of Metalliferous Mines Acts applied to Quarries.

Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77).

Section nine(*i*).

(*e*) "Mine" is defined in sect. 41 of the Metalliferous Mines Act, 1872, and sect. 75 of the Coal Mines Regulation Act, 1887. See the note on sect. 3 of the Metalliferous Mines Regulation Act, 1872, and the cases cited there.

(*f*) Repealed and replaced by 1 Edw. 7, c. 22. "Quarries" are there included among non-textile factories: see Sched. VI. Pt. II. (26).

(*g*) Now sects. 18 and 19 of the Fac-

tory and Workshop Act, 1901. These sections relate to notice and investigation of accidents. The Notice of Accidents Act, 1894 (see sect. 6), does not apply to quarries under this Act.

(*h*) Now sect. 54 of the Factory and Workshop Act, 1901: it deals with the employment of young male persons in factories at night.

(*i*) Prohibits payment of wages in public-houses.

Section eleven, with the substitution of the word "explosive" for the word "powder" (*k*).

Sections fifteen to eighteen (*l*).

Sections twenty to twenty-two (*m*).

Sections twenty-four to forty (*n*).

In section forty-one, the definitions of "owner" and "agent" and the definition of "court of summary jurisdiction" so far as it relates to Scotland.

Sections forty-two and forty-three (*o*).

Metalliferous Mines Regulation Act, 1875 (38 & 39 Vict. c. 39).

Section one, except the proviso (*p*).

Metalliferous Mines (Isle of Man) Act, 1891 (54 & 55 Vict. c. 47).

Section one.

NOTICE OF ACCIDENTS ACT, 1894.

This Act provides for the notification (sect. 1) to and investigation (sect. 3) by the Board of Trade of accidents in certain named (sect. 2, and schedule) employments. It may be extended by order of the Board of Trade to other employments (sect. 2, sub-sect. (2)). By virtue of sect. 6 there are excluded from its operation :—

1. Railways (34 & 35 Vict. c. 78; 63 & 64 Vict. c. 27).
2. Metalliferous Mines (35 & 36 Vict. c. 77).
3. Explosives (38 Vict. c. 17).
4. Coal Mines (50 & 51 Vict. c. 58).
5. Quarries (57 & 58 Vict. c. 42).
6. Factories and Workshops (1 Edw. 7, c. 22).

But see now the Notice of Accidents Act, 1906; at p. 859, *infra*.

57 & 58 VICT. c. 28 (1894).

An Act for providing for Notice of and Inquiry into Accidents occurring in certain Employments and Industries.

1.—(1) Where there occurs in any employment to which this section applies any accident which causes to any person employed therein either loss of life or such bodily injury as to prevent him on any one of the three working days next after the occurrence of the accident from being employed for five hours

Notice to Board of Trade of accidents in certain employments.

(*k*) Notice of accidents. See for the changes effected in this section by the Notice of Accidents Act, 1906, the section and the note thereon at p. 366, *supra*.

(*l*) Appointment, duties and powers of inspectors.

(*m*) Sect. 20, inspectors' annual reports; sect. 21, arbitration; sect. 22, coroner's inquests.

(*n*) Sects. 24—30, special rules and their publication; sects. 31—35, penal-

ties; sect. 39, Secretary of State to determine whether the mine comes under the Act; sect. 40, service of notices.

(*o*) Apply Act to Scotland and Isle of Man.

(*p*) Annual returns by owners and agents; the proviso exempting mines where not more than twelve persons are employed. For the effect of the Notice of Accidents Act, 1906, upon this section, see the note on it at p. 383, *supra*.

on his ordinary work (*pp*), his employer shall, as soon as possible and, in case of an accident not resulting in death, not later than six days after the occurrence of the accident, send to the Board of Trade notice in writing of the accident, specifying the time and place of its occurrence, its probable cause, the name and residence of any person killed or injured, the work on which any such person was employed at the time of the accident, and, in the case of an injury, the nature of the injury.

(2) If any person wilfully makes default in complying with the requirements of this section he shall be liable on summary conviction to a fine not exceeding forty shillings.

(3) *Repealed by Notice of Accidents Act, 1906, which is printed infra, p. 859.*

Application
of provisions
as to notice.

2.—(1) Section one of this Act shall apply to the employments specified in the schedule to this Act.

(2) If the Board of Trade are of opinion that any other employment in which twenty persons or more, not being domestic servants, are employed by the same employer, is specially dangerous to life or limb, the Board may, by order, direct that section one of this Act shall apply to that employment, and thereupon, while the order is in force, that section shall apply accordingly.

(3) The Board of Trade may, by order, revoke or modify any order made under the foregoing powers, and modify or limit the application of section one of this Act to the employments specified in the schedule to this Act.

(4) The Board of Trade may also, by order, require any further particulars to be specified in the notice to be sent in pursuance of section one of this Act.

(5) Every order made under this section shall be notified in the London Gazette and in such other manner as may appear to the Board of Trade sufficient for giving publicity thereto, and shall be laid before both Houses of Parliament as soon as may be after it is made.

Power to hold
formal investi-
gation in case
of serious
accidents.

3. Where it appears to the Board of Trade that any accident (*q*) involving loss of life or bodily injury is of sufficient importance to require a formal investigation of the accident, and of its causes and circumstances, the Board may by order direct such investigation to be held, and with respect to any such investigation the following provisions shall have effect:—

(1) The Board may appoint a competent person to hold the investigation, and may appoint any person possessing legal, medical, or special knowledge to act as assessor in holding the investigation, and may assign to any such person such remuneration as the Board, with the approval of the Treasury, determine:

(2) The person appointed to hold the investigation (herein-after called the Court) shall hold the same in open court in such manner and under such conditions as the Court may think most effectual for ascertaining the causes and circumstances of the accident, and enabling the Court to make the report in this section mentioned:

(3) The Court shall have for the purpose of the investigation all the powers of a court of summary jurisdiction when acting as a Court in the exercise of

(*pp*) For the words in italics are to be substituted "cause him to be absent throughout at least one whole day from his ordinary work": Notice of Accidents

Act, 1906, s. 6 (printed *infra*).

(*q*) *Scil.* in the named employments. See *Cox v. Hakes* (1890), 15 A. C. 506, per Lord Halsbury, at pp. 517, 518.

its ordinary jurisdiction, and all the powers of an inspector under the Railway Regulation Acts, 1840 to 1889, and in addition the following powers; namely—

- (a) Power to enter and inspect, or to authorise any person to enter and inspect, any place or building the entry or inspection whereof appears to the Court requisite for the said purpose;
- (b) Power, by summons signed by the Court, to require the attendance of all such persons as it thinks fit to call before it and examine for the said purpose, and for that purpose to require answers or returns to such inquiries as it thinks fit to make;
- (c) Power to require the production of all books, papers, and documents which it considers important for the said purpose;
- (d) Power to administer an oath and require any person examined to make and sign a declaration of the truth of the statements made by him in his examination:

(4) Every person attending as a witness before the Court, and not being the employer of the person killed or injured, or in the employment of that employer, shall be allowed such expenses as would be allowed to a witness attending before a court of record, and in case of dispute as to the amount to be allowed the same shall be referred by the Court to a master of the Supreme Court, who on request signed by the Court shall ascertain and certify the proper amount of the expenses:

(5) The Court holding an investigation under this section shall make a report to the Board of Trade, stating the causes of the accident and its circumstances, and adding any observations which the Court thinks right to make, and the Board may cause any such report to be made public in such manner as the Board think fit:

(6) The Court may order any costs and expenses incurred in and about an investigation under this section (including any remuneration payable to any person appointed to hold the investigation or to act as assessor) to be paid by any person summoned before it, if it finds that the accident was due to the act or default or negligence of that person; and any such order shall, on the application of any person entitled to the benefit thereof, be enforced by any court of summary jurisdiction as if the costs and expenses were a penalty imposed by the Court: but subject to any such order such costs and expenses shall be deemed to be part of the expenses of the Board of Trade in the execution of this Act:

(7) If any person without reasonable excuse (proof whereof shall lie on him) either fails, after having had the expenses (if any) to which he is entitled tendered to him, to comply with any summons or requisition of a Court holding an investigation under this section, or prevents or impedes the Court in the execution of its duty, he shall for every such offence be liable, on summary conviction, to a fine not exceeding ten pounds, and in the case of a failure to comply with a requisition for making any return or producing any document shall be liable, on summary conviction, to a fine not exceeding ten pounds for every day that such failure continues.

4. The expenses of the Board of Trade in the execution of this Act shall be defrayed out of moneys to be provided by Parliament.

Expenses of
Board of
Trade.

- Application to Government departments. 5. This Act shall apply in the case of accidents occurring to persons employed by a department of the Government, and in such cases the notice to be given by the employer shall be given by such person as the department by general rule direct.
- Savings. 6. Nothing in this Act shall apply to any employment which is for the time being regulated by any Act of Parliament administered by the Secretary of State or by inspectors appointed by him, or shall require notice to be given of any accident of which notice is required by any other Act to be given to the Board of Trade.
- Application to Scotland. 7. In the application of this Act to Scotland—
 The expression “ court of summary jurisdiction ” shall mean the sheriff :
 The expression “ master of the Supreme Court ” shall mean the auditor of the Court of Session.
 Every order made under this Act and required to be notified in the London Gazette, shall, if it relates to Scotland, be notified in the Edinburgh Gazette.
- Application to Ireland. 8. In the application of this Act to Ireland the expression “ master of the Supreme Court ” shall mean a taxing master of the Supreme Court.
 Every order made under this Act and required to be notified in the London Gazette, shall, if it relates to Ireland, be notified in the Dublin Gazette.
- Short title. 9. This Act may be cited as the Notice of Accidents Act, 1894.

SCHEDULE.

1. Construction, use, working, or repair of any railway, tramroad, tramway, gaswork, canal, bridge, tunnel, harbour, dock, port, pier, quay, or other work authorised by any local or personal Act of Parliament.
2. Construction or repair by means of a scaffolding of any building which exceeds thirty feet in height, or use or working of any such building in which more than twenty persons, not being domestic servants, are employed for wages.
3. Use or working of any traction engine or other engine or machine worked by steam in the open air.

CHAPTER VII.

AGRICULTURAL GANGS.

30 & 31 VICT. c. 130 (1867).

An Act for the Regulation of Agricultural Gangs.

1. This Act may be cited for all purposes as “The Agricultural Gangs Short title. Act, 1867.”

Section 2 (Commencement) repealed by Statute Law Revision (No. 1) Act, 1893.

3. The following words and expressions shall in this Act have the mean- Definition of ings hereby assigned to them, unless there is something in the context terms. inconsistent with such meanings; that is to say,

“Child” shall mean a child under the age of thirteen years:

“Young Person” shall mean a person of the age of thirteen years and under the age of eighteen years:

“Woman” shall mean a female of the age of eighteen years or upwards:

“Gangmaster” shall mean any person, whether male or female, who hires children, young persons, or women with a view to their being employed in agricultural labour on lands not in his own occupation; and, until the contrary is proved, any children, young persons, or women employed in agricultural labour on lands not in the occupation of the person who hired them shall be deemed to have been hired with the aforesaid view:

“Agricultural Gang” shall mean a body of children, young persons, and women, or any of them, under the control of a gangmaster.

4. The following regulations shall be observed by every gangmaster with Regulations respect to the employment of children, young persons, and women: as to gangs.

[(1) No child under the age of eight (*a*) years shall be employed in any agricultural gang:]

(2) No females shall be employed in the same agricultural gang with males:

(*a*) This sub-section was repealed by the Agricultural Children Act, 1873, which was itself repealed by the Elementary Education Act, 1876. The age under which all employment is prohibited is now raised to “twelve” by sect. 1 of the Elementary Education (School Attendance) Act (1893) Amendment Act, 1899. By the same section “the local authority for any district

may by bye-law . . . fix thirteen years as the minimum age for exemption from school attendance in the case of children to be employed in agriculture.” See Elementary Education Act, 1876, s. 5, the Elementary Education Act, 1880, s. 4, and the Elementary Education Act, 1893, printed with notes, *infra*. See also Employment of Children Act, 1903, ss. 1, 3.

- (3) No female shall be employed in any gang under any male gangmaster unless a female licensed to act as gangmaster is also present with that gang :

And any gangmaster employing any child, young person, or woman in contravention of this section, and any occupier of land on which such employment takes place, unless he proves that it took place without his knowledge, shall respectively be liable to a penalty not exceeding twenty shillings for each child, young person, or woman so employed.

Gangmasters
to be licensed.

5. No person shall act as a gangmaster unless he has obtained a licence to act as such under this Act.

Any person acting as a gangmaster without a licence under this Act shall incur a penalty not exceeding twenty shillings for every day during which he so acts.

Licences not
to be granted
to keepers of
public houses.
Licences to
gangmasters.

6. No licence shall be granted to any person who is licensed to sell beer, spirits, or any other exciseable liquor.

7. Licences to gangmasters shall be granted by two or more justices in divisional petty sessions, on due proof to the satisfaction of such justices that the applicant for a licence is of good character, and a fit person to be intrusted with the management of an agricultural gang.

The justices shall annex to their licence a condition limiting, in such manner as they think expedient, the distances within which the children employed by such gangmaster are to be allowed to travel on foot to their work, and any gangmaster violating the condition so annexed to his licence shall for each offence be liable to a penalty not exceeding ten shillings.

Any person aggrieved by the refusal of the justices to grant him a licence to act as gangmaster may appeal to the next practicable Court of General or Quarter Sessions ; and it shall be lawful for such Court, if they see cause, to grant a licence to the applicant, which shall be of the same validity as if it had been granted by the justices in petty sessions.

Since the Local Government Act, 1894, these licences are granted by the district council in a council district, and by the town council in a county borough (sects. 27, 32, *ibid.*). The fees are payable to the councils (sect. 27, sub-sect (3)). The right of appeal to Quarter Sessions remains.

Renewal of
licences.

8. Licences under this Act shall be in force for six months only, and may be renewed on similar proof to that on which an original licence is granted.

Fees in
respect of
licences.

9. There shall be charged in respect of each grant or renewal of licence a fee of one shilling, and such fee shall be accounted for and applied in manner in which the fees ordinarily received by the authority granting the licence are applicable.

See note on sect. 7, *supra*.

Licence, how
affected by
conviction of
gangmaster.

10. On any conviction of a gangmaster of any offence against this Act the justices who convict him shall indorse on his licence the fact of such conviction ; and on any conviction of such gangmaster of a second offence against this Act the justices may, in addition to any other penalty, withhold his licence for a period not exceeding three months ; and on any conviction of any gangmaster of a third offence against this Act the justices may, in addition to any other penalty, withhold his licence for a period not exceeding two years.

And after a fourth conviction for an offence against this Act the gang-master shall be disqualified from holding or receiving a licence under this Act.

11. All penalties under this Act may be recovered summarily before two or more justices in manner directed by an Act passed in the session holden in the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, chapter forty-three, intituled, *An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales with respect to summary Convictions and Orders*, or any Act amending the same.

Recovery of penalties.

12. This Act shall not apply to *Scotland or Ireland*.

Extent of Act.

CHAPTER VIII.

EMPLOYMENT OF CHILDREN.

THE employment of children has been greatly restricted and regulated by recent legislation. The prohibition, on pain of penalty, imposed upon their employment in *dangerous* performances by 42 & 43 Vict. c. 34 was extended by 4 Edw. 7, c. 15, to begging, whether under the guise of public performance or otherwise (sect. 2 (a)), to presence for the purpose of public performances for profit in any street or premises licensed for the sale of intoxicating liquor other than licensed theatres, &c. between nine p.m. and six a.m. (sect. 2 (b)), or licensed or used for public entertainment (sect. 2 (c)), and to training as acrobats (sect. 2 (d)); though licences for children of over ten years of age may be issued in the two latter cases (sect. 3); and the enforcement of this section is committed to the officers of the local authority (*a*) who are, for that purpose, to possess the powers of factory and workshop inspectors (sect. 3, sub-sect. (2)). By the Employment of Children Act, 1903 (3 Edw. 7, c. 45), the local authority (*a*) is empowered by bye-laws to regulate the conditions of the employment (*a*) of children (*a*) under fourteen in all or any specified occupation (sect. 1), and by bye-law or licence to regulate street-trading (*a*) under sixteen (sect. 2). Section 3 contains restrictions as to hours in any kind of employment and absolute prohibition of certain kinds of employment. Section 5 imposes penalties. An officer of the local authority (*a*) may, in execution of this Act, under a justice's order, enter any place of employment and examine it or any person therein (sect. 8). The Mines Regulation Acts and the Factory and Workshop Act are saved (sect. 9).

(*a*) Defined by sect. 13 of the Employment of Children Act, 1903.

42 & 43 VICT. c. 34 (1879).

An Act to regulate the employment of Children in places of public amusement in certain cases.

1. This Act may be cited as the Children's Dangerous Performances Act, Short title.
1879.

2.

3. Any person who shall cause any child under the age of fourteen years to take part in any public exhibition or performance whereby, in the opinion of a court of summary jurisdiction, the life or limbs of such child shall be endangered, and the parent or guardian, or any person having the custody, of such child, who shall aid or abet the same, shall severally be guilty of an offence against this Act, and shall on summary conviction be liable for each offence to a penalty not exceeding ten pounds.

Commence-
ment of Act.
Penalty for
employment
of any child
in dangerous
performances.

And where in the course of a public exhibition or performance, which in its nature is dangerous to the life or limb of a child under such age as aforesaid taking part therein, any accident causing actual bodily harm occurs to any such child, the employer of such child shall be liable to be indicted as having committed an assault; and the Court before whom such employer is convicted on indictment shall have the power of awarding compensation not exceeding twenty pounds, to be paid by such employer to the child, or to some person named by the Court on behalf of the child, for the bodily harm so occasioned; provided that no person shall be punished twice for the same offence.

Compensation
for accident to
any child.

4. Whenever any person is charged with an offence against this Act in respect of a child who in the opinion of the Court trying the case is apparently of the age alleged by the informant, it shall lie on the person charged to prove that the child is not of that age.

Evidence of
age.

5. Every offence against this Act in respect of which the person committing it is liable as above mentioned to a penalty not exceeding ten pounds shall be prosecuted and the penalty recovered with costs in a summary manner, as follows:

Recovery of
penalties.

In England, in accordance with the provisions of the Act eleventh and twelfth Victoria, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and of any Act or Acts amending the same; and the court of summary jurisdiction when hearing and determining an information in respect of any offence under this Act shall be constituted either of two or more justices of the peace in petty sessions, sitting at a place appointed for the holding of petty sessions, or some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace;

11 & 12 Vict.
c. 43.

In Scotland, in accordance with the provisions of the Summary Procedure Act, 1864, and of any Act or Acts amending the same; and

27 & 28 Vict.
c. 53.

In Ireland, within the police district of Dublin metropolis in accordance with the provisions of the Acts regulating the powers and duties of

14 & 15 Vict.
c. 93.

justices of the peace for such district, or of the police of such district, and elsewhere in Ireland in accordance with the provisions of the Petty Sessions (Ireland) Act, 1851, and any Act amending or affecting the same.

PREVENTION OF CRUELTY TO CHILDREN ACT, 1904.

(4 Edw. 7, c. 15.)

An Act to amend the Law relating to the Prevention of Cruelty to Children.

Restrictions on Employment of Children.

Restrictions
on employ-
ment of
children.

2. If any person—

- (a) causes or procures any child, being a boy under the age of fourteen years, or being a girl under the age of sixteen years, or having the custody, charge, or care of any such child, allows that child to be in any street, premises or place, for the purpose of begging or receiving alms, or of inducing the giving of alms, whether under the pretence of singing, playing, performing, offering anything for sale or otherwise ; or
- (b) causes or procures any child, being a boy under the age of fourteen years, or being a girl under the age of sixteen years, or having the custody, charge or care of any such child, allows that child to be in any street, or in any premises licensed for the sale of any intoxicating liquor, other than premises licensed according to law for public entertainments, for the purpose of singing, playing or performing or being exhibited for profit or offering anything for sale between nine p.m. and six a.m. ; or
- (c) causes or procures any child under the age of eleven years, or having the custody, charge or care of any such child, allows that child to be at any time in any street, or in any premises licensed for the sale of any intoxicating liquor or in premises licensed according to law for public entertainments, or in any circus or other place of public amusement, to which the public are admitted by payment, for the purpose of singing, playing or performing or being exhibited for profit, or offering anything for sale ; or
- (d) causes or procures any child under the age of sixteen years, or having the custody, charge or care of any such child, allows that child to be in any place for the purpose of being trained as an acrobat, contortionist or circus performer, or of being trained for any exhibition or performance which in its nature is dangerous (e),

that person shall, on summary conviction, be liable, at the discretion of the Court, to a fine not exceeding twenty-five pounds, or alternatively, or in default of payment of such fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding three months.

(e) See *Children's Dangerous Performances Act, 1879.*

Provided that—

- (i) This section shall not apply in the case of any occasional sale or entertainment the net proceeds of which are wholly applied for the benefit of any school or to any charitable object (*d*), if such sale or entertainment is held elsewhere than in premises which are licensed for the sale of any intoxicating liquor, but not licensed according to law for public entertainments, or if, in the case of a sale or entertainment held in any such premises as aforesaid, a special exemption from the provisions of this section has been granted in writing under the hands of two justices of the peace; and
- (ii) Any local authority may, if they think it necessary or desirable so to do, from time to time by bye-law (*e*) extend or restrict the hours mentioned in paragraph (b) of this section either on every day or on any specified day or days of the week, and either as to the whole of their district or as to any specified area therein; and
- (iii) Paragraphs (c) and (d) of this section shall not apply in any case in respect of which a licence granted under this Act (*f*) is in force, so far as that licence extends; and

3.—(1) A petty sessional court, or in Scotland the school board, may, notwithstanding anything in this Act or in the Employment of Children Act, 1903, or any bye-law made thereunder, grant a licence for such time and during such hours of the day, and subject to such restrictions and conditions as the Court or board think fit, for any child exceeding ten years of age—

- (a) to take part in any entertainment or series of entertainments to take place in premises licensed according to law for public entertainments or in any circus or other place of public amusement as aforesaid; or
- (b) to be trained as aforesaid; or
- (c) for both purposes,

if satisfied of the fitness of the child for the purpose, and if it is shown to their satisfaction that proper provision has been made to secure the health and kind treatment of the children taking part in the entertainment or series of entertainments or being trained as aforesaid, and the Court or board may, upon sufficient cause, vary, add to, or rescind any such licence.

Any such licence shall be sufficient protection to all persons acting under or in accordance with the same.

(2) It shall be the duty of inspectors and other officers charged with the execution of the Employment of Children Act, 1903 (*g*), to see whether the restrictions and conditions of any licence under this section are duly complied with, and any such inspector or officer shall have the same power to enter, inspect and examine any place of public entertainment at which the employment of a child is for the time being licensed under this section as an inspector appointed under the Factory and Workshop Act, 1901, has to enter, inspect and examine a factory or workshop under section 119 of that Act, and that section shall apply accordingly.

Licences for employment of children.

Inspection of places of employment.

(*d*) As to the meaning of these words, see *Income Tax Commissioners v. Pemsel*, [1891] A. C. 531.

(*e*) See, as to making and confirma-

tion of bye-laws, 3 Edw. 7, c. 45, s. 4; and s. 22 of this Act.

(*f*) *I* vide sect. 3.

(*g*) Sect. 8.

Procedure on
application
for licence.

(3) Seven days' notice to the chief officer of police for the district necessary.

(4) Where a licence is granted under this section to any person, that person shall forthwith cause a copy thereof to be sent to the local authority for the district in which the licence is to take effect, and if he fails to cause such copy to be sent, shall be liable on summary conviction to a fine not exceeding five pounds.

(5) Nothing in this or in the last preceding section shall affect the provisions of the Elementary Education Act, 1876, or the Education (Scotland) Act, 1878, as amended by any later enactment.

3 EDW. 7, c. 45 (1903).

An Act to make better provision for regulating the Employment of Children.

Power to
make bye-
laws for
regulating
the employ-
ment of
children.

1. Any local authority (*h*) may make bye-laws—

(i) prescribing for all children (*h*), or for boys and girls separately, and with respect to all occupations or to any specified occupation,—

(a) the age below which employment (*h*) is illegal; and

(b) the hours between which employment is illegal; and

(c) the number of daily and weekly hours beyond which employment is illegal;

(ii) prohibiting absolutely or permitting, subject to conditions, the employment of children in any specified occupation.

Power to
make bye-
laws for the
regulation of
street trading
by person
under sixteen.

2. Any local authority may make bye-laws with respect to street trading (*h*) by persons under the age of sixteen, and may by such bye-laws—

(a) prohibit such street trading, except subject to such conditions as to age, sex, or otherwise, as may be specified in the bye-law, or subject to the holding of a licence to trade to be granted by the local authority;

(b) regulate the conditions on which such licences may be granted, suspended, and revoked;

(c) determine the days and hours during which, and the places at which, such street trading may be carried on;

(d) require such street traders to wear badges;

(e) regulate generally the conduct of such street traders:

Provided as follows:—

(1) The grant of a licence or the right to trade shall not be made subject to any conditions having reference to the poverty or general bad character of the person applying for a licence or claiming to trade;

(2) The local authority, in making bye-laws under this section, shall have special regard to the desirability of preventing the employment of girls under sixteen in streets or public places.

(*h*) Defined by sect. 13, *infra*.

3.—(1) A child shall not be employed between the hours of nine in the evening and six in the morning: Provided that any local authority may, by bye-law, vary these hours either generally or for any specified occupation.

General restrictions on employment of children.

(2) A child under the age of eleven years shall not be employed in street trading.

(3) No child who is employed half-time under the Factory and Workshop Act, 1901 (*i*), shall be employed in any other occupation.

(4) A child shall not be employed to lift, carry, or move anything so heavy as to be likely to cause injury to the child.

(5) A child shall not be employed in any occupation likely to be injurious to his life, limb, health, or education, regard being had to his physical condition.

(6) If the local authority send to the employer of any child a certificate signed by a registered medical practitioner that the lifting, carrying, or moving of any specified weight is likely to cause injury to the child, or that any specified occupation is likely to be injurious to the life, limb, health, or education of the child, the certificate shall be admissible as evidence in any subsequent proceedings against the employer in respect of the employment of the child.

4.—(1) A bye-law made under this Act shall not have any effect until confirmed by the Secretary of State, and shall not be so confirmed until at least thirty days after the local authority have published it in such manner as the Secretary of State may by general or special order direct (*k*).

General provisions as to bye-laws.

(2) The Secretary of State shall, before confirming any bye-law, consider any objections to it which may be addressed to him by persons affected or likely to be affected thereby.

(3) The Secretary of State may, before confirming any bye-law, order that a local inquiry be held with respect to the bye-law or with respect to any objections thereto. The person holding any such inquiry shall receive such remuneration as the Secretary of State may determine, and that remuneration and the expenses of the local inquiry shall be paid by the local authority making the bye-law.

(4) Bye-laws made under this Act may apply either to the whole of the area of the local authority, or to any specified part thereof.

(5) Bye-laws made by a county council shall not be of any force or effect within any borough or urban district the council of which is constituted a local authority under this Act.

(6) (*l*).

5.—(1) If any person employs a child or other person under the age of sixteen in contravention of this Act, or of any bye-law under this Act, he shall be liable on summary conviction to a fine not exceeding forty shillings, or, in case of a second or subsequent offence, not exceeding five pounds.

Offences and penalties.

(2) If any parent or guardian (*m*) of a child or other person under the age of sixteen has condoned the commission of the alleged offence by wilful

(*i*) See sects. 25, 27.

(*k*) See Statutory Rules and Orders, 1903, p. 740 (11th November, 1903).

(*l*) Repealed by 4 Edw. 7, c. 15: see sect. 22 of that Act.

(*m*) Defined by sect. 13.

default, or by habitually neglecting to exercise due care, he shall be liable on summary conviction to the like fine.

(3) If any person under the age of sixteen contravenes the provisions of any bye-law as to street trading made under this Act, he shall be liable on summary conviction to a fine not exceeding twenty shillings, and in case of a second or subsequent offence, if a child, to be sent to an industrial school, and, if not a child, to a fine not exceeding five pounds.

(4) In lieu of ordering a child to be sent under this section to an industrial school, a court of summary jurisdiction may order the child to be taken out of the charge or control of the person who actually has the charge or control of the child, and to be committed to the charge and control of some fit person who is willing to undertake the same until such child reaches the age of sixteen years: And the provisions of sections seven and eight of the Prevention of Cruelty to Children Act, 1894 (*n*), shall, with the necessary modifications, apply to any order for the disposal of a child made under this sub-section.

Offences by
agents or
workmen and
by parents.

6.—(1) Where the offence of taking a child into employment in contravention of this Act is in fact committed by an agent or workman of the employer, such agent or workman shall be liable to a penalty as if he were the employer.

(2) Where a child is taken into employment in contravention of this Act on the production, by or with the privity of the parent, of a false or forged certificate, or on the false representation of his parent that the child is of an age at which such employment is not in contravention of this Act, that parent shall be liable to a penalty not exceeding forty shillings.

(3) Where an employer is charged with any offence under this Act he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the Court is satisfied that the employer had used due diligence to comply with the provisions of the Act, and that the other person had committed the offence in question without the employer's knowledge, consent, or connivance, the other person shall be summarily convicted of the offence, and the employer shall be exempt from any fine.

(4) When it is made to appear to the satisfaction of an inspector or other officer charged with the enforcement of this Act, at the time of discovering the offence, that the employer had used all due diligence to enforce compliance with this Act, and also by what person the offence had been committed, and also that it had been committed without the knowledge, consent, or connivance of the employer, and in contravention of his order, then the inspector or officer shall proceed against the person whom he believes to be the actual offender in the first instance without first proceeding against the employer.

Limitation of
time.

7. With respect to summary proceedings for offences and fines under this Act, and any bye-laws made thereunder, the information shall be laid within three months after the commission of the offence.

The ordinary time of limitation is six months: 11 & 12 Vict. c. 43, s. 11.

(*n*) Now repealed and replaced by 4 Edw. 7, c. 15: see sects. 7 and 8 of that Act.

8. If it appear to any justice of the peace, on the complaint of an officer of the local authority acting under this Act, that there is reasonable cause to believe that a child is employed in contravention of this Act in any place, whether a building or not, such justice may by order under his hand empower an officer of the local authority to enter such place at any reasonable time, within forty-eight hours from the date of the order, and examine such place and any person therein touching the employment of any child therein.

Power of
officer of local
authority to
enter place of
employment.

Any person refusing admission to an officer authorised by an order under this section, or obstructing him in the discharge of his duty, shall for each offence be liable on summary conviction to a penalty not exceeding twenty pounds.

Cf. sect. 29 of Elementary Education Act, 1876, printed *infra*.

9. Bye-laws made under this Act shall not apply to any child above twelve employed in pursuance of the Factory and Workshop Act, 1901, or the Metalliferous Mines Regulation Act, 1872, or the Coal Mines Regulation Act, 1887, so far as regards that employment; and in the application of section three to children employed under those Acts the inspectors appointed under those Acts shall be substituted for the local authority in respect of such employment.

Employment
in factories.
1 Edw. 7,
c. 22.
35 & 36 Vict.
c. 77.
50 & 51 Vict.
c. 58.

10. Nothing in this Act or in any bye-law made thereunder shall apply to the exercise of manual labour by any child under order of detention in a certified industrial or reformatory school, or by any child while receiving instruction in manual labour in any school.

Saving for
industrial and
other schools.

11. Repealed by 4 Edw. 7, c. 15 (o).

12. Any expenses incurred by a local authority in England and Wales in carrying into effect the provisions of this Act or any bye-law made thereunder shall be defrayed in the case of a county out of the county fund, and in the case of a borough out of the borough fund or borough rate, and in the case of any other urban district out of any rate or fund applicable for defraying expenses incurred in the execution of the Public Health Acts: Provided that a county council shall not raise any sum on account of their expenses under this Act within any borough or urban district the council of which is a local authority under this Act.

Incorporation
and
amendment
of sect. 3 of
57 & 58 Vict.
c. 41.

Expenses of
Act in
England and
Wales.

13. In this Act—

Definitions.

The expression “child” means a person under the age of fourteen years:

The expression “guardian,” used in reference to a child, includes any person who is liable to maintain or has the actual custody of the child:

The expressions “employ” and “employment,” used in reference to a child, include employment in any labour exercised by way of trade or for the purposes of gain, whether the gain be to the child or to any other person:

The expression “local authority” means, in the case of the City of London, the mayor, aldermen, and commons of that city in common

(o) See sect. 3 of that Act, which embodies the repealed section.

council assembled, in the case of a municipal borough with a population according to the census of nineteen hundred and one of over ten thousand, the borough council, and in the case of any other urban district with a population according to the census of nineteen hundred and one of over twenty thousand, the district council, and elsewhere the county council:

The expression "street trading" includes the hawking of newspapers, matches, flowers, and other articles, playing, singing, or performing for profit, shoe-blackening, and any other like occupation carried on in streets or public places.

Application
to Scotland.

14. In the application of this Act to Scotland—

- (1) The Secretary for Scotland shall be substituted for the Secretary of State:
- (2) "The sheriff or sheriff-substitute" shall be substituted for "a court of summary jurisdiction":
- (3) Any fine or penalty under this Act shall be recoverable by imprisonment in terms of the Summary Jurisdiction Acts:
- (4) The expression "local authority," in sections one and three of this Act, shall mean the school board; and in section two of this Act shall mean, in the case of a royal, parliamentary, or police burgh having, within its boundary for police purposes, according to the census of nineteen hundred and one, a population of or exceeding seven thousand, and in the case of the burgh of Coatbridge, the town council, and elsewhere the county council, and for the purposes of section two every burgh other than those herein-before specified shall be held to form part of the county within which it is situated: Provided that in section eight of the Local Government (Scotland) Act, 1889, the expression "purposes herein-after mentioned" shall be deemed to include the purposes of this Act:
- (5) Nothing in this Act shall affect the power of the school board to grant exemptions in certain employments as provided by sub-section three of section seven of the Education (Scotland) Act, 1878, and the expression "this Act" in the said section shall be deemed to include the Employment of Children Act, 1903:
- (6) A bye-law shall not be made by a council under this Act until the expiry of a period of one month after such bye-law as proposed to be made has been communicated to the clerk to each school board of a parish, burgh, or district, comprised or partly comprised within the area of such council for the purposes of this Act, and such council shall give due consideration to any observations received from any such school board within such period; and
- (7) Nothing in this Act shall make it lawful for any child to be employed in contravention of section six of the Education (Scotland) Act, 1878, or section two of the Education (Scotland) Act, 1901:
- (8) Section two hundred and seventy-six of the Burgh Police (Scotland) Act, 1892, is hereby repealed.

41 & 42 Vict.
c. 78.

1 Edw. 7,
c. 9.
55 & 56 Vict.
c. 55.
Expenses of
Act in
Scotland.

15. Any expenses incurred by a local authority in Scotland in carrying into effect the provisions of this Act or any bye-laws made thereunder shall be paid, where the local authority is a county council, out of the public

health general assessment leviable within the county or a district of the county, provided that in any royal, parliamentary, or police burgh having, according to the census of nineteen hundred and one, a population of less than seven thousand, a proportion of such expenses corresponding to the valuation of such burgh shall be paid to the county council out of the public health general assessment leviable in such burgh, in compliance with a requisition to that effect to be sent to the town council of such burgh annually not later than the month of October in each year, and, where the local authority is a town council, out of the public health general assessment, and shall be paid, where the local authority is a school board, out of the school rate.

16. In the application of this Act to Ireland—

Application
to Ireland.

- (1) The Lord Lieutenant shall be substituted for the Secretary of State;
- (2) The expression "local authority" means, in the case of an urban district with a population according to the census of nineteen hundred and one of over five thousand, the district council, and elsewhere the county council;
- (3) Proceedings under this Act may be brought by or in the name of any officer of the local authority, or by an officer of a school attendance committee, or by a constable;
- (4) All expenses and costs to be incurred by a local authority in the execution of this Act shall be defrayed in the case of the council of a county borough or of a district council out of any rate or fund applicable to the purposes of the Public Health (Ireland) Act, 1878, and in the case of a county council out of the county fund, and in such case the amount required therefor may be raised by means of the poor rate equally over so much of the county as does not comprise any urban district the council whereof is constituted a local authority under this Act.

41 & 42 Vict.
c. 52.

17. This Act shall come into operation on the first day of January one thousand nine hundred and four.

Commence-
ment of Act.

18. This Act may be cited as the Employment of Children Act, 1903.

Short title.

CHAPTER IX.

EDUCATION OF CHILDREN IN EMPLOYMENT.

THE Factory and Workshop Act, 1901, deals specially with this question (*a*); while the Education Acts avail themselves for the enforcement of their regulations of the machinery of inspection provided by other special Acts (*b*). The Coal Mines Regulation Act, 1887, omits the Education clauses contained in the old Act of 1872, leaving the matter, like its sister Act dealing with metalliferous mines, to the operation of the Education Acts. Children on canal-boats are subject to the Elementary Education Acts (*c*). The sections in various statutes (*d*) which permit the employer to make deductions from wages and pay them directly to the school authorities in respect of education fees have ceased to be important since the practical abolition of school fees by the Education Act, 1891. The age at which a child, on obtaining a certificate of the standard he has reached, may be exempted totally or partially from school attendance was raised by the Elementary Education (School Attendance) Act (1893) Amendment Act, 1899, to "twelve"; and the age up to which such a certificate is required for exemption was raised to "fourteen" by the Elementary Education Act, 1900, s. 6.

33 & 34 VICT. c. 75 (1870).

An Act to provide for Public Elementary Education in England and Wales.

Attendance at School.

As to attendance of children at school.

74. Every school board may from time to time, with the approval of the Education Department, make bye-laws for all or any of the following purposes:—

(1) Requiring the parents(*e*) of children of such age, not less than five

(*a*) See sects. 68—72; sect. 103, sub-sects. (1) (d) and (4); sect. 119; sect. 134; sects. 137, 138.

(*b*) See 39 & 40 Vict. c. 79, s. 7.

(*c*) See Canal Boats Act, 1877 (40 & 41 Vict. c. 60), ss. 6, 7.

(*d*) *E.g.*, 1 Edw. 7, c. 22, s. 70; 50 & 51 Vict. c. 58, s. 10; 1 & 2 Will. 4, c. 37, s. 24; and 50 & 51 Vict. c. 46, s. 7 (Truck Acts).

(*e*) Defined by sect. 3 of this Act as including "guardian and every person

years, nor more than *fourteen* (*f*) years, as may be fixed by the bye-laws, to cause such children (unless there is some reasonable excuse) to attend school :

- (2) Determining the time during which children are so to attend school; provided that no such bye-law shall prevent the withdrawal of any child from any religious observance or instruction in religious subjects, or shall require any child to attend school on any day exclusively set apart for religious observance by the religious body to which his parent belongs, or shall be contrary to anything contained in any Act for regulating the education of children employed in labour :
- (3) Providing for the remission or payment of the whole or any part of the fees of any child where the parent satisfies the school board that he is unable from poverty to pay the same :
- (4) Imposing penalties for the breach of any bye-laws :
- (5) Revoking or altering any bye-law previously made. Provided that any bye-law under this section requiring a child between *twelve* (*g*) and *fourteen* (*f*) years of age to attend school shall provide for the total or partial exemption of such child from the obligation to attend school if one of Her Majesty's inspectors certifies that such child has reached a standard of education specified in such bye-law.

Any of the following reasons shall be a reasonable excuse; namely,

- (1) That the child is under efficient instruction in some other manner :
- (2) That the child has been prevented from attending school by sickness or any unavoidable cause :
- (3) That there is no public elementary school open which the child can attend within such distance, not exceeding three miles measured according to the nearest road from the residence of such child, as the bye-laws may prescribe.

The school board, not less than one month before submitting any bye-law under this section for the approval of the Education Department, shall deposit a printed copy of the proposed bye-laws at their office for inspection by any ratepayer, and supply a printed copy thereof gratis to any ratepayer, and shall publish a notice of such deposit.

The Education Department before approving of any bye-laws shall be satisfied that such deposit has been made and notice published, and shall cause such inquiry to be made in the school district as they think requisite.

Any proceeding to enforce any bye-law may be taken, and any penalty for the breach of any bye-law may be recovered, in a summary manner; but no penalty imposed for the breach of any bye-law shall exceed such amount as with the costs will amount to *twenty* (*h*) shillings for each offence, and such bye-laws shall not come into operation until they have been sanctioned by Her Majesty in Council (*i*).

It shall be lawful for Her Majesty, by Order in Council (*j*), to sanction the

who is liable to maintain or has the actual custody of any child." See *Hanee v. Burnett* (1880), 45 J. P. 54.
 (*f*) Substituted for "thirteen" by 63 & 64 Vict. c. 53, s. 6.

(*g*) Substituted for "ten" by 62 & 63 Vict. c. 13.

(*h*) "Substituted for "five" by 63 & 64 Vict. c. 53, s. 6, sub-s. (2).

(*i*) By 63 & 64 Vict. c. 53, s. 6, sub-

said bye-laws, and thereupon the same shall have effect as if they were enacted in this Act.

All bye-laws sanctioned by Her Majesty in Council (*i*) under this section shall be set out in an appendix to the annual report of the Education Department.

The last clause of the proviso in sub-sect. (2) has caused difficulties. In cases where the bye-laws and the provisions of special Acts have conflicted, the decisions have contradicted one another. In *Bury v. Cherryholm* (1876), 1 Ex. D. 457, the respondent's child, being employed in a workshop, had attended school ten hours a week. The Workshop Regulation Act, 1887, required attendance for "at least ten hours in every week": the bye-laws required longer attendance. *Held*, that ten hours was only the minimum, and that there had been a breach of the bye-laws. But in *Mellor v. Jenham* (1879), 4 Q. B. D. 241, the Court held that the bye-law was not enforceable in such a case; and that the Elementary Education Acts did not in this respect control the Factory Acts. This difficulty has, however, been largely removed by sect. 4 of the Education Act, 1880: see *Stevenson v. Goldstraw*, [1906] 2 K. B. 298.

There are other reasonable excuses besides those enumerated in this section: *Belper School Attendance Committee v. Bayley* (1882), 9 Q. B. D. 259 (parents having taken every reasonable means to enforce attendance); *London School Board v. Duggan* (1884), 13 Q. B. D. 176 (child fairly instructed, of respectable parents, earning wages to support brothers and sisters, who otherwise could not have been supported).

Elementary Education Act, 1873.

36 & 37 VICT. c. 86.

Section 24, sub-sect. 4. Any justice may require by summons any parent or employer of a child, required by a bye-law to attend school, to produce the child before a court of summary jurisdiction, and any person failing, without reasonable excuse to the satisfaction of the Court, to comply with such summons shall be liable to a penalty not exceeding twenty shillings.

39 & 40 VICT. c. 79 (1876).

PART I.

Law as to Employment and Education of Children.

Declaration
of duty of
parent to
educate child.

4. It shall be the duty of the parent (*k*) of every child to cause such child to receive efficient elementary instruction in reading, writing, and arithmetic, and if such parent fail to perform such duty, he shall be liable to such orders and penalties as are provided by this Act.

Regulation of
employment
of child
under 12, and
certificate of
education or
previous

5. A person shall not, after the commencement of this Act, take into his employment (except as hereinafter in this Act mentioned) any child—

(1) Who is under the age of *twelve* years; or

(2) Who, being of the age of *twelve* years or upwards, has not obtained such certificate either of his proficiency in reading, writing, and

s. (3), this section "shall have effect as if the sanction therein referred to were the sanction of the Board of Education

instead of the sanction of Her Majesty in Council."

(*k*) See note (*e*).

elementary arithmetic, or of previous due attendance at a certified efficient school, as is in this Act in that behalf mentioned, unless such child, being of the age of *twelve* years or upwards, is employed, and is attending school in accordance with the provisions of the Factory Acts (*l*) or of any bye-law of the local authority (hereinafter mentioned) made under section seventy-four of "The Elementary Education Act, 1870," as amended by "The Elementary Education Act, 1873," and this Act, and sanctioned by the Education Department.

school attendance being condition of employment of child over 12.

The effect of the Elementary Education Act, 1899, and the Factory and Workshop Act, 1901, s. 62, is to substitute "twelve" for "ten" throughout this section.

See the provisions contained in the Prevention of Cruelty to Children Act, 1901, the Mines (Prohibition of Child Labour Underground) Act, 1900, and the Employment of Children Act, 1903, as to the employment of children, printed *supra*.

6. Every person who takes a child into his employment in contravention of this Act shall be liable, on summary conviction, to a penalty not exceeding forty shillings.

Penalty for employing child in contravention of Act.

See sect. 2 of the Elementary Education (School Attendance) Act, 1893.

7. The provisions of this Act respecting the employment of children shall be enforced—

Enforcement of Act.

- (1) In a school district within the jurisdiction of a school board by that board; and
- (2) In every other school district by a committee (in this Act referred to as a school attendance committee) appointed annually, if it is a borough, by the council of the borough, and if it is a parish, by the guardians of the union comprising such parish.

A school attendance committee under this section may consist of not less than six nor more than twelve members of the council or guardians appointing the committee, so, however, that, in the case of a committee appointed by guardians, one-third at least shall consist of *ex officio* guardians, if there are any and sufficient *ex officio* guardians. Every such school board and school attendance committee (in this Act referred to as the local authority) shall, as soon as may be, publish the provisions of this Act within their jurisdiction in such a manner as they think best calculated for making those provisions known.

Provided that it shall be the duty of the inspectors and sub-inspectors acting under the Acts regulating factories, workshops, and mines respectively, and not of the local authority, to enforce the observance by the employers of children in such factories, workshops, and mines, of the provisions of this Act respecting the employment of children; but it shall be the duty of the local authority to assist the said inspectors and sub-inspectors in the performance of their duty by information and otherwise.

It shall be the duty of such local authority to report to the Education Department any infraction of the provisions of section seven of "The Elementary Education Act, 1870," in any public elementary school within their district which may come to their knowledge, and also to forward to the

(l) Now the Factory and Workshop Act, 1901.

Education Department any complaint which they may receive of the infraction of those provisions.

But the local education authority is now that provided by the Education Act, 1902: see sects. 1 and 5.

8. [Refers to sections in Workshop or Factory Acts, and is repealed by "Factory and Workshop Act, 1878," sect. 107.]

But the repeal of this section does not affect the power under sect. 11, sub-sect. (1) of this Act to make attendance orders in the case of children "under this Act prohibited from being taken into full time employment," that description applying to all the children mentioned in sect. 5 of this Act: *Wingard v. Twogood* (1882), 10 Q. B. D. 218, overruling *Scunders v. Crawford* (1882), 9 Q. B. D. 613.

Exception to prohibition of employment of children.

9. A person shall not be deemed to have taken any child into his employment contrary to the provisions of this Act, if it is proved to the satisfaction of the Court having cognizance of the case either—

- (1) That during the employment there is not within two miles, measured according to the nearest road, from the residence of such child any public elementary school open which the child can attend; or
- (2) That such employment, by reason of being during the school holidays, or during the hours during which the school is not open, or otherwise, does not interfere with the efficient elementary instruction of such child, and that the child obtains such instruction by regular attendance for full time at a certified efficient school or in some other equally efficient manner; or
- (3) That the employment is exempted by the notice of the local authority hereinafter next mentioned; (that is to say),

The local authority (*m*) may, if it thinks fit, issue a notice exempting from the prohibitions and restrictions of this Act the employment of children above the age of eight years, for the necessary operations of husbandry and the ingathering of crops, for the period to be named in such notice, provided that the period or periods so named by any such local authority shall not exceed in the whole six weeks between the first day of January and the 31st day of December in any year.

The local authority (*m*) shall cause a copy of every notice so issued to be sent to the Education Department and to the overseers of every parish within its jurisdiction, and the overseers shall cause such notice to be fixed to the door of all churches and chapels in the parish, and the local authority may further advertise any such notice in such manner (if any) as it may think fit.

Power of officer of local authority to enter place of employment.

29. If it appears to any justice of the peace, on the complaint of an officer of the local authority acting under this Act, that there is reasonable cause to believe that a child is employed in contravention of this Act, in any place, whether a building or not, such justice may by order under his hand empower an officer of the local authority to enter such place at any reasonable time within forty-eight hours from the date of the order and examine

(*m*) See Education Act, 1902, ss. 1 and 5.

such place and any person found therein touching the employment of any child therein.

Any person refusing admission to an officer authorised by an order under this section or obstructing him in the discharge of his duty, shall, for each offence, be liable on summary conviction to a penalty not exceeding twenty pounds.

39. Where the offence of taking a child into employment in contravention of this Act is in fact committed by an agent or workman of the employer, such agent or workman shall be liable to a penalty as if he were the employer.

Exemption of employer on proof of guilt of some other person.

Where a child is taken into employment in contravention of this Act on the production by or with the privity of the parent of a false or forged certificate, or on the false representation of his parent that the child is of an age at which such employment is not in contravention of this Act, that parent shall be liable to a penalty not exceeding forty shillings.

Where an employer charged with taking a child into his employment in contravention of this Act proves that he has used due diligence to enforce the observance of this Act, and either that some agent or workman of his employed the child without his knowledge or consent, or that the child was employed either on the production of a forged or false certificate and under the belief in good faith in the genuineness and truth of such certificate, or on the representation by his parent that the child was of an age at which his employment would not be in contravention of this Act and under the belief in good faith in such representation, the employer shall be exempt from any penalty.

Where an employer satisfies the local authority (*m*), inspector, or other person about to institute a prosecution, that he is exempt under this section by reason of some agent, workman, or parent being guilty, and gives all facilities in his power for proceeding against and convicting such agent, workman, or parent, such authority, inspector, or person shall institute proceedings against such agent, workman, or parent, and not against the employer.

47. A parent of a child who employs such child in any labour exercised by way of trade or for the purposes of gain shall be deemed for the purposes of this Act to take such child into his employment.

Definition of employment in case of parent.

Elementary Education Act, 1880.

43 & 44 VICT. c. 23.

4. Every person who takes into his employment a child of the age of twelve (*n*) and under the age of fourteen (*o*) years, resident in a school district, before that child has obtained a certificate of having reached the standard of education fixed by a bye-law in force in the district for the total or partial

Enforcing of bye-laws.

(*m*) See Education Act, 1902, ss. 1 and 5.

(*n*) See note (*g*), *supra*.

(*o*) See note (*f*), *supra*.

exemption of children of the like age from the obligation to attend school, shall be deemed to take such child into his employment in contravention of the Elementary Education Act of 1876, and shall be liable to a penalty accordingly.

Proceedings may, in the discretion of the local authority (*p*) or person instituting the same, be taken for punishing the contravention of a bye-law, notwithstanding that the act or neglect or default alleged as such contravention constitutes habitual neglect to provide efficient elementary education for a child within the meaning of section eleven of the Elementary Education Act, 1876 (*q*): Provided that nothing in this section shall prevent an employer from employing any child who is employed by him or by any other person at the time of the passing of this Act, and who attends school in accordance with the provisions of the Factory and Workshop Act, 1901.

The second paragraph of this section negatives the decision in *Ex parte London School Board, Re Morphy* (1877), 2 Q. B. D. 397, where it was held that in such a case proceedings must be taken under the statute and not under the bye-laws.

56 & 57 VICT. c. 51 (1893).

An Act to amend the Elementary Education Acts with respect to the Age for Attendance at School.

Age for exemption from school attendance.

33 & 34 Vict. c. 75.

Penalty for employment of children before exemption from school attendance.

39 & 40 Vict. c. 79.

Saving.

Commencement of Act.

1. The age at which a child may, in pursuance of any bye-law made under the Elementary Education Acts, 1870 to 1891, obtain total or partial exemption from the obligation to attend school, on obtaining a certificate as to the standard of examination which he has reached, shall be raised to eleven, and every such bye-law, so far as it provides for such exemption, shall be construed and have effect as if a reference to eleven years of age were substituted therein for a reference to a lower age, and in section seventy-four of the Elementary Education Act, 1870 (*r*), eleven shall be substituted for ten.

2. If any person takes a child into his employment in such manner as to prevent the child from attending school in accordance with the bye-laws for the time being in force in the district in which the child resides, he shall be deemed to take the child into his employment in contravention of the Elementary Education Act, 1876 (*s*), and shall be liable to a penalty accordingly.

3. Nothing in this Act shall apply in the case of any child who, at the passing of this Act, is under the bye-laws then in force in the district in which he resides, exempt wholly or partially, as the case may be, from the obligation to attend school.

4. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-four.

(*p*) See Education Act, 1902, ss. 1 and 5.

(*q*) That is, children habitually

neglected by parents, habitually wandering, or consorting with criminals.

(*r*) Printed *supra*.

(*s*) See sect. 6, printed *supra*.

5. This Act may be cited as the Elementary Education (School Attendance) Act, 1893, and shall be read with the Elementary Education Acts, 1870 to 1891.

62 & 63 VICT. c. 13 (1899).

An Act to amend the Law respecting the Employment and Education of Young Children.

1. On and after the first day of January one thousand nine hundred the Elementary Education (School Attendance) Act, 1893, shall have effect as if "twelve" were substituted therein for "eleven":

Amendment
of 56 & 57
Vict. c. 51.

Provided that nothing in this Act shall apply in the case of any child who at the said date is, under the bye-laws then in force in the school district in which he resides, exempt wholly or partially, as the case may be, from the obligation to attend school:

Provided also that the local authority for any district may, by bye-law for any parish within their district, fix thirteen years as the minimum age for exemption from school attendance in the case of children to be employed in agriculture, and that in such parish such children over eleven and under thirteen years of age who have passed the standard fixed for partial exemption from school attendance by the bye-laws of the local authority shall not be required to attend school more than two hundred and fifty times in any year.

Such bye-law shall have effect as a bye-law made under section seventy-four of the Elementary Education Act, 1870 (*t*), and all Acts amending the same.

The local authority shall be the local authority fixed by section seven of the Elementary Education Act, 1876 (*u*).

Provided also that a child shall be entitled to obtain partial exemption from school attendance on attaining the age of twelve years if such child has made three hundred attendances in not more than two schools during each year for five preceding years whether consecutive or not.

See *Stevenson v. Craig*, [1906] 2 K. B. 298.

2. This Act may be cited as the Elementary Education (School Attendance) Act (1893) Amendment Act, 1899, and shall be read with the Elementary Education Acts, 1870 to 1897.

Short title
and
construction.

The Elementary Education Act, 1893, is printed *supra*.

(*t*) Printed *supra*.

(*u*) See the note on that section at p. 454, *supra*.

Elementary Education Act, 1900.

63 & 64 VICT. c. 53 (1900).

6.—(1) In section seventy-four of the Elementary Education Act, 1870, and in section four of the Elementary Education Act, 1880 (which relate to bye-laws for the attendance of children at school), fourteen years shall be substituted for thirteen years.

(2) The maximum penalty for breach of a bye-law requiring the attendance of a child at an elementary school, or of an attendance order made under the Elementary Education Act, 1876, shall be twenty shillings, and accordingly twenty shillings shall be substituted for five shillings in section seventy-four of the Elementary Education Act, 1870, and in section twelve of the Elementary Education Act, 1876.

(3) The said section seventy-four shall have effect as if the sanction therein referred to were the sanction of the Board of Education instead of the sanction of Her Majesty in Council.

See sect. 74 of the Elementary Education Act, 1870, printed at p. 450, *supra*.

CHAPTER X.

CONCILIATION ACT, 1896.

THIS Act, having for its object the settlement of trade disputes, has repealed all former Arbitration Acts (sect. 7). It confers (sect. 2) powers of arbitration and mediation in such disputes upon the Board of Trade. It also provides (sect. 1) for the registration and supervision of already existing boards of conciliation.

59 & 60 VICT. c. 30.

An Act to make better Provision for the Prevention and Settlement of Trade Disputes.

1.—(1) Any board established either before or after the passing of this Act, which is constituted for the purpose of settling disputes between employers and workmen by conciliation or arbitration, or any association or body authorised by an agreement in writing made between employers and workmen to deal with such disputes (in this Act referred to as a conciliation board) may apply to the Board of Trade for registration under this Act.

Registration
and powers
of Concilia-
tion Boards.

(2) The application must be accompanied by copies of the constitution, bye-laws, and regulations of the conciliation board, with such other information as the Board of Trade may reasonably require.

(3) The Board of Trade shall keep a register of conciliation boards, and enter therein with respect to each registered board its name and principal office, and such other particulars as the Board of Trade may think expedient, and any registered conciliation board shall be entitled to have its name removed from the register on sending to the Board of Trade a written application to that effect.

(4) Every registered conciliation board shall furnish such returns, reports of its proceedings, and other documents as the Board of Trade may reasonably require.

(5) The Board of Trade may, on being satisfied that a registered conciliation board has ceased to exist or to act, remove its name from the register.

(6) Subject to any agreement to the contrary, proceedings for conciliation before a registered conciliation board shall be conducted in accordance with the regulations of the board in that behalf.

2.—(1) Where a difference exists or is apprehended between an employer, or any class of employers, and workmen, or between different classes of

Powers of
Board of

Trade as to
trade
disputes.

workmen, the Board of Trade may, if they think fit, exercise all or any of the following powers, namely :—

- (a) inquire into the causes and circumstances of the difference ;
- (b) take such steps as to the Board may seem expedient for the purpose of enabling the parties to the difference to meet together, by themselves or their representatives, under the presidency of a chairman mutually agreed upon or nominated by the Board of Trade or by some other person or body with a view to the amicable settlement of the difference ;
- (c) on the application of employers or workmen interested, and after taking into consideration the existence and adequacy of means available for conciliation in the district or trade and the circumstances of the case, appoint a person or persons to act as conciliator or as a board of conciliation ;
- (d) on the application of both parties to the difference, appoint an arbitrator.

(2) If any person is so appointed to act as conciliator, he shall inquire into the causes and circumstances of the difference by communication with the parties, and otherwise shall endeavour to bring about a settlement of the difference, and shall report his proceedings to the Board of Trade.

(3) If a settlement of the difference is effected, either by conciliation or by arbitration, a memorandum of the terms thereof shall be drawn up and signed by the parties or their representatives, and a copy thereof shall be delivered to and kept by the Board of Trade.

Exclusion of
52 & 53 Vict.
c. 49.

3. The Arbitration Act, 1889, shall not apply to the settlement by arbitration of any difference or dispute to which this Act applies, but any such arbitration proceedings shall be conducted in accordance with such of the provisions of the said Act, or such of the regulations of any conciliation board, or under such other rules or regulations as may be mutually agreed upon by the parties to the difference or dispute.

Power for
Board of
Trade to aid
establishing
conciliation
boards.

4. If it appears to the Board of Trade that in any district or trade adequate means do not exist for having disputes submitted to a conciliation board for the district or trade, they may appoint any person or persons to inquire into the condition of the district or trade, and to confer with the employers and employed, and if the Board of Trade think fit, with any local authority or body, as to the expediency of establishing a conciliation board for the district or trade.

Report to
Parliament.

5. The Board of Trade shall from time to time present to Parliament a report of their proceedings under this Act.

Expenses.

6. The expenses incurred by the Board of Trade in the execution of this Act shall be defrayed out of moneys provided by Parliament.

Repeal.
5 Geo. 4,
c. 96 ;
30 & 31 Vict.
c. 105 ;
35 & 36 Vict.
c. 46.

7. The Masters and Workmen Arbitration Act, 1824, and the Councils of Conciliation Act, 1867, and the Arbitration (Masters and Workmen) Act, 1872, are hereby repealed.

8. This Act may be cited as the Conciliation Act, 1896.

Short title.

CHAPTER XI.

FACTORY AND WORKSHOP ACT, 1901 (*a*).

[1 Edw. 7, c. 22.]

THIS Act repeals all previous Factory and Workshop Acts (*aa*), and consolidates the law with amendments. Some of the principal amendments are :—

Sect. 4. Power of Secretary of State to act in default of local authority.

Sect. 11. Safety-valves and gauges on steam-boilers.

Sect. 13 (1) (b). Restriction on children cleaning machinery in motion.

Sects. 14 (1) (6) (7) and 15. Fire-escapes.

Sects. 62 and 156. Children under twelve not to be employed.

Sects. 79—85. Regulations as to dangerous trades.

Sects. 104 and 106. Terms “factory,” “workshop” and “plant” extended for the purpose of applying certain provisions.

Sects. 112 and 115. “Domestic” factories defined and made subject to provisions as to dangerous processes.

Sect. 129. General registers to be kept.

Sect. 150. Crown factories and workshops included.

Sect. 149 and Schedule 6, Part I. (20), Part II. (28). Additions to “non-textile factories and workshops.”

The powers of district councils, particularly with regard to the sanitary superintendence of “workshops” and “workplaces,” are very much extended.

The provisions of the repealed Cotton Cloth Factories Acts together with the Secretary of State’s orders made under them are embodied in sects. 90—96 of this Act.

See for a short review of Factory Legislation, Evans Austin’s *Law Relating to Factories and Workshops* (2nd ed. 1901), Introduction, c. i. p. xxiii.

(*a*) The Factory and Workshop Act, 1907, which deals with “Laundries” and certain “Institutions,” is printed at p. 863, *post*.

(*aa*) With the temporary exceptions mentioned in Sched. 7, Part II., see sect. 161.

By sect. 126 the Secretary of State is given power to make or rescind special orders; and by sect. 161, sub-sect. (2) it is provided:—"All orders and all special rules and requirements made or having effect under any enactment hereby repealed shall continue to have effect as if they had been made under this Act."

Penalties and the procedure for their recovery are dealt with in sects. 135—148.

ARRANGEMENT OF SECTIONS.

PART I.

HEALTH AND SAFETY.

(i) *Health.*

1. Sanitary condition of factory.
2. Sanitary condition of workshops and workplaces.
3. Overcrowding of factory or workshop.
4. Power of Secretary of State to act in default of local authority.
5. Powers of inspector as to sanitary defects in factory or workshop remediable by sanitary authority.
6. Temperature in factories and workshops.
7. Ventilation.
8. Drainage of floors.
9. Sanitary conveniences in factories and workshops.

(ii) *Safety.*

10. Fencing of machinery.
11. Steam boilers.
12. Regulations as to self-acting machines.
13. Restrictions on cleaning when machinery is in motion.
14. Provision of means of escape in case of fire.
15. Bye-laws for means of escape from fire.
16. Doors of factory or workshop to open from inside.
17. Power to make order as to dangerous machine.
18. Power to make order as to unhealthy or dangerous factory or workshop.

(iii) *Accidents.*

19. Notice of accidents causing death or bodily injury.
20. Investigation of and report on accidents by certifying surgeon.
21. Inquest in case of death by accident in factory or workshop.
22. Power to direct formal investigation of accidents.

PART II.

EMPLOYMENT.

(i) *Hours and Holidays.*

23. Restrictions on period of employment of women, young persons, and children.
24. Hours of employment in textile factories—young persons and women.
25. Hours of employment in textile factories—children.
26. Hours of employment in non-textile factories and workshops—young persons and women.
27. Hours of employment in non-textile factories and workshops—children.
28. Hours of employment in print works and bleaching and dyeing works.
29. Special provisions as to employment in women's workshops.
30. Special provision as to eight hours' employment of women and young persons.
31. Restriction on employment inside and outside factory or workshop on same day.
32. Notice fixing hours of employment, &c.
33. Meal times to be simultaneous, and employment during meal times forbidden.
34. Prohibition of Sunday employment.
35. Annual holidays and half-holidays.

(ii) *Special Exceptions as to Hours and Holidays.*

36. Employment between nine a.m. and nine p.m. in certain cases.
37. Employment of male young persons above sixteen in lace factories.
38. Employment of male young persons above sixteen in bakehouses.
39. Five hours' spell in certain textile factories.
40. Different meal times for different sets, and employment during meal times.
41. Special exceptions as to fish and fruit preserving.
42. Special exceptions as to creameries.
43. Substitution of another day for Saturday.
44. Saturday employment in Turkey red dyeing.
45. Holidays on different days for different sets.
46. Employment inside and outside on the same day.
47. Hours and holidays in factory or workshop of Jewish occupier.
48. Sunday employment of Jews in factory or workshop of Jewish occupier.

Overtime.

49. Overtime employment of women for press of work,
50. Overtime employment of women on perishable articles.
51. Overtime employment on incomplete process.
52. Overtime employment in factories driven by water.
53. Overtime employment in Turkey red dyeing and open-air bleaching.

Night Work.

- 54. Night employment of male young persons of fourteen.
- 55. Night employment of male young persons of fourteen in glass works.
- 56. Night employment of male young persons of sixteen in printing newspapers.

Intermittent Employment.

- 57. Exemption for certain flax scutch mills.

Supplemental.

- 58. Power to impose sanitary requirements as condition of special exceptions.
- 59. Power to rescind orders as to special exceptions.
- 60. Notices, registers, &c. relating to special exceptions.

(iii) Fitness for Employment.

- 61. Prohibition of employment of women after childbirth.
- 62. Prohibition of employment of children under twelve.
- 63. Certificates of fitness for employment of young persons under sixteen and children in factories.
- 64. Regulations as to grant of certificate of fitness.
- 65. Power to obtain certificates of fitness for employment in workshops.
- 66. Power to require certificates of fitness for employment in certain workshops.
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- 70. Payment by occupier of sum for schooling.
- 71. Employment as young person of child of thirteen on obtaining educational certificate.
- 72. Definitions of "certified efficient school," and "recognised efficient school."

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- 74. Provision as to ventilation by fan in certain factories and workshops.
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(ii) *Regulations for Dangerous Trades.*

- 79. Power to make regulations for safety of persons employed in dangerous trades.
- 80. Procedure for making regulations.
- 81. Inquiries.
- 82. Application of regulations.
- 83. Provisions which may be made by regulations.
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SPECIAL MODIFICATIONS AND EXTENSIONS.

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- 88. Regulations as to grinding of cutlery in tenement factory.
- 89. Certificate of fitness in tenement factory.

(ii) *Cotton Cloth and other Humid Factories.*

- 90. Temperature and humidity.
- 91. Power to alter table of humidity.
- 92. Employment of thermometers.
- 93. Notices and inspections where humidity is artificially produced.
- 94. Regulations for the protection of health.
- 95. Penalties for non-compliance.
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(iv) *Laundries.*

- 103. Application of Act to laundries.

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- 104. Application of certain provisions to docks.

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- 106. Application of certain provisions to railway sidings.

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HOME WORK.

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- 111. Application of Act to domestic factories and workshops.
- 112. Dangerous processes in domestic factories and workshops.
- 113. Abstracts for domestic factories and workshops.
- 114. Non-application of Act to certain domestic workshops.
- 115. Definitions of "domestic factory" and "domestic workshop."

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- 119. Powers of inspectors.
- 120. Right of inspector to conduct proceedings before magistrates.
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- 133. Notice by medical officer of health of employment of woman, young person, or child in workshops.
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LEGAL PROCEEDINGS.

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- 141. Power of occupier to exempt himself from fine on conviction of the actual offender.
- 142. Owner of machine liable in certain cases instead of occupier.
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- 149. Factories and workshops to which Act applies.
- 150. Application to Crown factories and workshops.
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(ii) Application of Act to Scotland and Ireland.

- 159. Application of Act to Scotland.
- 160. Application of Act to Ireland.

(iii) *Repeal, &c.*

- 161. Repeal of Acts.
 - 162. Commencement of Act.
 - 163. Short title.
- SCHEDULES.

An Act to consolidate with Amendments the Factory and Workshop Acts.

[17th August, 1901.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

PART I.

HEALTH AND SAFETY.

(i) *Health.*

Sanitary
condition
of factory.

1.—(1) The following provisions shall apply to every factory as defined by this Act (*a*), except a domestic factory (*b*):—

- (a) It must be kept in a cleanly state;
- (b) It must be kept free from effluvia arising from any drain, watercloset, earthcloset, privy, urinal, or other nuisance;
- (c) It must not be so overcrowded (*c*) while work is carried on therein as to be dangerous or injurious to the health of the persons employed therein;
- (d) It must be ventilated (*d*) in such a manner as to render harmless, so far as is practicable, all the gases, vapours, dust, or other impurities generated in the course of the manufacturing process (*c*) or handicraft carried on therein, that may be injurious to health.

38 & 39 Viet.
c. 55.

(2) The provisions of section ninety-one of the Public Health Act, 1875, with respect to a factory, workshop, or workplace not kept in a cleanly state, or not ventilated, or overcrowded, shall not apply to any factory to which this section applies.

(3) For the purpose of securing the observance of the requirements in this section as to cleanliness in factories, all the inside walls of the rooms of a factory, and all the ceilings or tops of those rooms (whether those walls, ceilings, or tops are plastered or not), and all the passages and staircases of a factory, if they have not been painted with oil or varnished once at least within seven years, shall (subject to any special exceptions made in pursuance of this section) be limewashed once at least within every fourteen months, to date from the time when they were last limewashed; and if they have been so painted or varnished shall be washed with hot water and soap once at least within every fourteen months, to date from the time when they were last washed.

(a) See sect. 149.

(b) Defined in sect. 115.

(c) Defined in sect. 3.

(d) As to ventilation by fan, see sect. 74.

(e) Defined in sect. 156.

(4) Where it appears to the Secretary of State that in any class of factories, or parts thereof, the provisions of this section with respect to limewashing or washing are not required for the purpose of securing therein the observance of the requirements of this Act as to cleanliness, or are by reason of special circumstances inapplicable, he may, if he thinks fit, by special order grant to that class of factories, or parts thereof, a special exception that the said provisions shall not apply thereto.

(5) A factory in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

Sub-sect. (4). See order, revoking all former orders, dated Nov. 2, 1903. (St. R. & O. Rev. 1904, Vol. IV. Factory and Workshop, p. 1; L. G. Nov. 3, 1903, p. 6095.)

Sub-sect. (5). For penalties, see sect. 135.

2.—(1) The provisions of section ninety-one of the Public Health Act, 1875, with respect to a factory, workshop, or workplace, not kept in a cleanly state, or not ventilated, or overcrowded (*f*), shall apply to every factory, workshop (*g*), and workplace, except any factory to which the last preceding section applies. Sanitary condition of workshops and workplaces.
38 & 39 Vict. c. 55.

(2) Every workshop and every workplace within the meaning of the Public Health Act, 1875, must be kept free from effluvia arising from any drain, watercloset, earthcloset, privy, urinal, or other nuisance, and unless so kept shall be deemed to be a nuisance liable to be dealt with summarily under the law relating to public health.

(3) Where on the certificate of a medical officer of health or inspector of nuisances it appears to any district council (*h*) that the limewashing, cleansing, or purifying, of any such workshop, or of any part thereof, is necessary for the health of the persons employed therein, the council shall give notice in writing to the owner (*i*) or occupier of the workshop to lime-wash, cleanse, or purify the same, or part thereof, as the case may require.

(4) If the person to whom notice is so given fails to comply therewith within the time therein specified, he shall be liable to a fine not exceeding ten shillings for every day during which he continues to make default, and the council may, if they think fit, cause the workshop or part to be lime-washed, cleansed, or purified, and may recover in a summary manner the expenses incurred by them in so doing from the person in default.

(5) This section shall not apply to any workshop or workplace to which the Public Health (London) Act, 1891 (*j*), applies.

“Work-place” is nowhere defined. The term was considered in *Bennett v. Harding*, [1900] 2 Q. B. 397, and Channell, J., said: “I think that a work-place must be a place where some work is being perpetually or permanently done. I do not say that the mere presence of workmen in repairing a private house would make it a work-place. . . .”

3.—(1) A factory shall for the purposes of this Act, and a workshop shall for the purposes of the law relating to public health, be deemed to be so overcrowded as to be dangerous or injurious to the health of the persons Overcrowding of factory or workshop.

(*f*) Defined in sect. 3.

(*g*) Defined in sect. 149.

(*h*) See sects. 153, 154, 155.

(*i*) Defined in sect. 156.

(*j*) See sects. 2 (1) (*g*), 25.

employed therein, if the number of cubic feet of space in any room therein bears to the number of persons employed at one time in the room a proportion less than two hundred and fifty, or during any period of overtime, four hundred, cubic feet of space to every person.

(2) Provided that the Secretary of State may, by special order, modify this proportion for any period during which artificial light other than electric light is employed for illuminating purposes, and may, by like order, as regards any particular manufacturing process or handicraft, substitute for the said figures of two hundred and fifty and four hundred respectively any higher figures, and thereupon this section shall have effect as modified by the order.

(3) Where a workshop or workplace, not being a domestic workshop (*k*), is occupied by day as a workshop and by night as a sleeping apartment, the Secretary of State may by special order modify the proportion of cubic feet of space prescribed by this section, and substitute therefor any higher figures, and thereupon this section shall have effect as modified by the order.

(4) There shall be affixed in every factory and workshop a notice specifying the number of persons who may be employed in each room of the factory or workshop by virtue of this section.

Sub-sect. (2). See order of Dec. 30, 1903. (St. R. & O. Rev. 1904, Vol. IV. Factory and Workshop, p. 4; L. G. Jan. 1, 1904, p. 24.)

Sub-sect. (3). The figure has been raised, by order dated Jan. 17, 1902, to 400 cubic feet under this sub-section. (St. R. & O. Rev. 1904, *ibid.* p. 3.)

Sub-sect. (4). As to position of notice, see sect. 128. Domestic factories and workshops are exempted: sect. 111, sub-sect. (4) (b). For penalty for non-affixture, see sect. 128, sub-sect. (2). In "tenement" factories the "owner," not the "occupier," is responsible: sect. 87 (1) (v).

Power of
Secretary of
State to act
in default
of local
authority.

4.—(1) If the Secretary of State is satisfied that the provisions of this Act, or of the law relating to public health in so far as it affects factories, workshops, and workplaces, have not been carried out by any district council, he may, by order, authorise an inspector to take, during such period as may be mentioned in the order, such steps as appear necessary or proper for enforcing those provisions.

(2) An inspector authorised in pursuance of this section shall, for the purpose of his duties thereunder, have the same powers with respect to workshops and workplaces as he has with respect to factories, and he may, for that purpose, take the like proceedings for enforcing the provisions of this Act or of the law relating to public health, or for punishing or remedying any default as may be taken by the district council; and he shall be entitled to recover from the district council all such expenses in and about any proceedings as he may incur, and as are not recovered from any other person.

This is new.

Powers of
inspector as
to sanitary
defects in
factory or
workshop

5.—(1) Where it appears to an inspector that any act, neglect, or default, in relation to any drain, watercloset, earthcloset, privy, ashpit, water-supply, nuisance, or other matter in a factory or workshop, is punishable or remediable under the law relating to public health, but not under this Act,

(*k*) Defined in sect. 115.

that inspector shall give notice in writing of the act, neglect, or default, to the district council in whose district the factory or workshop is situate, and it shall be the duty of the district council to make such inquiry into the subject of the notice, and take such action thereon, as seems to that council proper for the purpose of enforcing the law, and to inform the inspector of the proceedings taken in consequence of the notice.

remediable
by sanitary
authority.

(2) An inspector may, for the purposes of this section, take with him into a factory or a workshop a medical officer of health, inspector of nuisances, or other officer of the district council.

(3) Where notice of an act, neglect, or default, is given by an inspector under this section to a district council, and proceedings are not taken within one month for punishing or remedying the act, neglect, or default, the inspector may take the like proceedings for punishing or remedying the same as the district council might have taken, and shall be entitled to recover from the district council all such expenses in and about the proceedings as the inspector incurs and as are not recovered from any other person, and have not been incurred in any unsuccessful proceedings.

This section applies also to "men's workshops" (sect. 157) and to laundries (sect. 103 (1) (d)).

Where an inspector "takes the like proceedings" under sub-sect. (3), the justices have no jurisdiction to inquire into the suitability or sufficiency of the sanitary accommodation existing at the factory, or required by the notice of the inspector: *Tracy v. Pretty & Sons*, [1901] 1 Q. B. 444; and see the cases cited there.

Seemle, that an appeal lies to quarter sessions under sect. 7 of the Public Health Acts Amendment Act, 1890, from the requirements of the factory inspector in such a case: *Ibid.*, see sect. 145.

6.—(1) In every factory and workshop adequate measures must be taken for securing and maintaining a reasonable temperature in each room in which any person is employed, but the measures so taken must not interfere with the purity of the air of any room in which any person is employed.

Temperature
in factories
and work-
shops.

(2) The Secretary of State may, by special order, direct with respect to any class of factories or workshops that thermometers be provided, maintained, and kept in working order, in such place and position as may be specified in the order.

(3) A factory or workshop in which there is any contravention of this section, or of any order under this section, shall be deemed not to be kept in conformity with this Act.

The last clause of sub-sect. (1) and sub-sect. (2) is new.

This section applies to laundries (sect. 103 (1) (d)), and to "tenement factories" (sect. 87 (1)), but not to "domestic" factories and workshops (sect. 111 (4) (c)), nor to "men's workshops" (sect. 157). For penalties see sect. 135.

7.—(1) In every room in any factory or workshop sufficient means of ventilation shall be provided, and sufficient ventilation shall be maintained.

Ventilation.

(2) The Secretary of State may, by special order, prescribe a standard of sufficient ventilation for any class of factories or workshops, and that standard shall be observed in all factories and workshops of that class, and an order made under this power may supersede any provision of this Act or order of the Secretary of State with respect to ventilation in cotton cloth factories.

(3) A factory in which there is a contravention of the provisions of this section shall be deemed not to be kept in conformity with this Act, and a workshop in which there is a contravention of the provisions of this section shall be deemed to be a nuisance liable to be dealt with summarily under the law relating to public health.

(4) If the occupier of a factory or workshop (including a cotton cloth factory in which humidity of the atmosphere is artificially produced) alleges that the whole or part of the expenses of providing the means of ventilation required by this Act ought to be borne by the owner, he may by complaint apply to a court of summary jurisdiction, and that Court may make such order concerning the expenses or their apportionment as appears to the Court to be just and equitable under the circumstances of the case, regard being had to the terms of any contract between the parties.

This is new.

Sub-sect. (2). 600 cubic feet of fresh air per hour for each person has been prescribed in the case of "textile factories other than cotton cloth factories." (St. R. & O. Rev. 1904, Vol. IV., Factory and Workshop, p. 4; L. G., Feb. 10, 1902.) See sects. 111 and 157.

Drainage of floors.

8.—(1) In every factory or workshop or part thereof in which any process is carried on which renders the floor liable to be wet to such an extent that the wet is capable of being removed by drainage, adequate means shall be provided for draining off the wet.

(2) A factory in which there is a contravention of the provisions of this section shall be deemed not to be kept in conformity with this Act, and a workshop in which there is a contravention of the provisions of this section shall be deemed to be a nuisance liable to be dealt with summarily under the law relating to public health.

This is new.

See sects. 111 (4) (e), 157, 103 (1) (d).

Sanitary conveniences in factories and workshops.

9.—(1) Every factory and workshop must be provided with sufficient and suitable accommodation in the way of sanitary conveniences, regard being had to the number of persons employed in or in attendance at the factory or workshop, and also where persons of both sexes are or are intended to be employed or in attendance, with proper separate accommodation for persons of each sex.

(2) The Secretary of State shall, by special order, determine what is sufficient and suitable accommodation within the meaning of this section.

(3) A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

(4) This section does not apply to the administrative county of London, or to any place where section twenty-two of the Public Health Acts Amendment Act, 1890, is in force.

Sub-sect. (1). "In attendance": see *Bennett v. Harding*, [1900] 2 Q. B. 397.

Sub-sect. (2) is new. Under the Act of 1895 this was the duty of an inspector or the local authority.

See sect. 157 (1).

Sub-sect. (2). See order dated February 4, 1903. (St. R. & O. Rev. 1904, Vol. IV., Factory and Workshop, p. 5; L. G., Feb. 17, 1903.)

(ii) *Safety.*

10.—(1) With respect to the fencing of machinery in a factory the following provisions shall have effect :— Fencing of machinery.

- (a) Every hoist or teagle, and every fly-wheel directly connected with the steam or water or other mechanical power, whether in the engine-house or not, and every part of any water wheel or engine worked by any such power, must be securely fenced ; and
- (b) Every wheel-race not otherwise secured must be securely fenced close to the edge of the wheel-race ; and
- (c) All dangerous parts of the machinery (*k*), and every part of the mill gearing (*k*), must either be securely fenced, or be in such position or of such construction as to be equally safe to every person employed or working in the factory as it would be if it were securely fenced ; and
- (d) All fencing must be constantly maintained in an efficient state while the parts required to be fenced are in motion or use, except where they are under repair or under examination in connexion with repair, or are necessarily exposed for the purpose of cleaning or lubricating or for altering the gearing or arrangements of the parts of the machine.

(2) A factory in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

As to application of this and the eight following sections to laundries, see sect. 103 (1) (d).

The machinery need not be fenced when not in motion for the purpose of a manufacturing process : *Coe v. Platt* (1852), 7 Ex. 923. It is not enough that the machinery is fenced in the ordinary manner, used and approved as sufficient at the best-regulated factory in the district : *Schofield v. Schunk* (1855), 24 L. T. 253. It is no answer to an action for not fencing a shaft that the shaft is so high up and out of the way as not to be dangerous : *Doel v. Shepperd* (1856), 5 E. & B. 856.

Liability in summary proceedings under this section and sect. 136 for not fencing is not affected by the fact that the workman's injuries were suffered in consequence of his own carelessness and disobedience : *Blenkinsop v. Ogden*, [1898] 1 Q. B. 783. Though a penalty for omission to fence is imposed by sect. 136, an action for damages by a workman injured thereby will lie against the employer : *Groves v. Lord Wunborne*, [1898] 2 Q. B. 402. Nor is "common employment" any defence to such an action : *Ibid.*

Sub-sect. (c). This sub-section includes all the machinery in a factory—that which performs the industrial process as well as that which conveys the motive power : *Redgrave v. Lloyd*, [1895] 1 Q. B. 876 ; and it is for the Court to say what is "dangerous" : *Ibid.*, per Wills, J., p. 880. "Machinery is 'dangerous' if, in the ordinary course of human affairs, danger may be reasonably anticipated from the use of it without protection" : Per Wills, J., in *Hundle v. Birtwhistle*, [1897] 1 Q. B. 192, 195.

11.—(1) Every steam boiler used for generating steam in a factory or workshop, or in any place to which any of the provisions of this Act apply, must, whether separate or one of a range— Steam boilers.

- (a) have attached to it a proper safety valve and a proper steam gauge and water gauge to show the pressure of steam and the height of water in the boiler ; and
- (b) be examined thoroughly by a competent person at least once in every fourteen months.

(*k*) Defined in sect. 156.

(2) Every such boiler, safety valve, steam gauge, and water gauge must be maintained in proper condition.

(3) A report of the result of every such examination in the prescribed form, containing the prescribed particulars, shall within fourteen days be entered into or attached to the general register of the factory or workshop, and the report shall be signed by the person making the examination, and, if that person is an inspector of a boiler-inspecting company or association, by the chief engineer of the company or association.

(4) A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

(5) This section shall not apply to the boiler of any locomotive which belongs to and is used by any railway company, or to any boiler belonging to or exclusively used in the service of His Majesty.

(6) For the purposes of this section, the whole of a tenement factory or workshop shall be deemed to be one factory or workshop, and the owner shall be substituted for the occupier, and he shall register the report referred to in this section.

This is new.

Regulations
as to self-
acting
machines.

12.—(1) In a factory erected on or after the first day of January one thousand eight hundred and ninety-six, the traversing carriage of any self-acting machine must not be allowed to run out within a distance of eighteen inches from any fixed structure not being part of the machine, if the space over which it runs out is a space over which any person is liable to pass, whether in the course of his employment (*l*) or otherwise. Provided that nothing in this sub-section shall prevent any portion of the traversing carriage of any self-acting cotton spinning or woollen spinning machine being allowed to run out within a distance of twelve inches from any part of the head stock of another self-acting cotton spinning or woollen spinning machine.

(2) A person employed in a factory must not be allowed to be in the space between the fixed and the traversing parts of a self-acting machine unless the machine is stopped with the traversing part on the outward run, but for the purpose of this provision the space in front of a self-acting machine shall not be included in the space aforesaid.

(3) A woman (*m*), young person (*m*), or child (*m*), must not be allowed to work between the fixed and traversing part of any self-acting machine while the machine is in motion by the action of steam, water, or other mechanical power.

(4) A factory in which a traversing carriage is allowed to run out in contravention of this section shall be deemed not to be kept in conformity with this Act, and any person allowed to be in the space aforesaid or to work in contravention of this section shall be deemed to be employed contrary to the provisions of this Act.

Sub-sect. (1). The proviso is new.

Sub-sects. (2) and (3). "Allowed": see *Crabtree v. Fern Spinning Co.* (1901), 18 Times L. R. 91.

(*l*) Defined in sect. 152.

(*m*) Defined in sect. 156.

13.—(1) A child (*m*) must not be allowed to clean in any factory—

(a) any part of any machinery; or

(b) any place under any machinery other than overhead mill gearing,

while the machinery is in motion by the aid of steam, water, or other mechanical power.

Restrictions
on cleaning
when
machinery is
in motion.

(2) A young person (*m*) must not be allowed to clean any dangerous part of the machinery in a factory while the machinery is in motion by the aid of steam, water, or other mechanical power; and for this purpose such parts of the machinery shall, unless the contrary is proved, be presumed to be dangerous as are so notified by an inspector to the occupier of the factory.

(3) A woman (*m*) or young person (*m*) must not be allowed to clean such part of the machinery in a factory as is mill-gearing while the machinery is in motion for the purpose of propelling any part of the manufacturing machinery.

(4) A woman, young person, or child, allowed to clean in contravention of this section, shall be deemed to be employed contrary to the provisions of this Act.

Sub-sect. (1) (b) is new.

Sub-sect. (1). The alteration of the wording in this sub-section gives effect to the decision (on sect. 9 of the old Act) in *Pearson v. Belgian Mills Co.*, [1896] 1 Q. B. 244, viz., that a child was prohibited from cleaning the motionless parts of any machinery that was in motion.

14.—(1) Every factory of which the construction was not commenced on or before the first day of January one thousand eight hundred and ninety-two, and in which more than forty persons are employed, and every workshop of which the construction was not commenced before the first day of January one thousand eight hundred and ninety-six, and in which more than forty persons are employed, must be furnished with a certificate from the district council of the district in which the factory or workshop is situate that the factory or workshop is provided with such means of escape in case of fire for the persons employed therein as can reasonably be required under the circumstances of each case, and if the factory or workshop is not so furnished it shall be deemed not to be kept in conformity with this Act; and it shall be the duty of the council to examine every such factory and workshop, and, on being satisfied that the factory or workshop is so provided, to give such a certificate as aforesaid. The certificate must specify in detail the means of escape so provided.

Provision of
means of
escape in
case of fire.

(2) With respect to all factories and workshops to which the foregoing provisions of this section do not apply, and in which more than forty persons are employed, it shall be the duty of the district council of every district from time to time to ascertain whether all such factories and workshops within their district are provided with such means of escape as aforesaid, and, in the case of any factory or workshop which is not so provided, to serve on the owner of the factory or workshop a notice in writing specifying the measures necessary for providing such means of escape as aforesaid, and requiring him

(*m*) Defined in sect. 156.

to carry them out before a specified date, and thereupon the owner shall, notwithstanding any agreement with the occupier, have power to take such steps as are necessary for complying with the requirements, and unless the requirements are complied with, the owner shall be liable to a fine not exceeding one pound for every day that the non-compliance continues.

(3) In case of a difference of opinion between the owner of the factory or workshop and the council under the last foregoing sub-section, the difference shall, on the application of either party, to be made within one month after the time when the difference arises, be referred to arbitration, and thereupon the provisions of the First Schedule to this Act shall have effect, and the award on the arbitration shall be binding on the parties thereto, and the notice of the council shall be discharged, amended, or confirmed in accordance with the award.

(4) If the owner alleges that the occupier of the factory or workshop ought to bear or contribute to the expenses of complying with the requirement, he may apply to the county court having jurisdiction where the factory or workshop is situate, and thereupon the county court, after hearing the occupier, may make such order as appears to the Court just and equitable under all the circumstances of the case.

(5) For the purpose of enforcing the foregoing provisions of this section, an inspector may give the like notice and take the like proceedings as under the foregoing provisions of this Act with respect to matters punishable or remediable under the law relating to public health but not under this Act, and those provisions shall apply accordingly.

(6) The means of escape in case of fire provided in any factory or workshop shall be maintained in good condition and free from obstruction, and if it is not so maintained the factory or workshop shall be deemed not to be kept in conformity with this Act.

(7) For the purposes of this section the whole of a tenement factory or workshop shall be deemed to be one factory or workshop, and the owner shall be substituted for the occupier.

(8) All expenses incurred by a district council in the execution of this section shall be defrayed—

- (a) In the case of an urban district council, as part of their expenses of the general execution of the Public Health Act, 1875; and
- (b) In the case of a rural district council, as special expenses incurred in the execution of the Public Health Act, 1875;

and those expenses shall be charged to the contributory place in which the factory or workshop is situate.

Sub-sects. (6) and (7) are new.

The second, third and fourth floors of a building were let to separate tenants and were "factories"; the basement, ground and first floors, having regard to the business carried on by the tenants there, were not "factories": *Held*, that the second, third and fourth floors *only* were "factories" within sect. 93 of the Act of 1878 (which section defines "factory" in substantially the same way as sect. 149 of this Act): *London County Council v. Lewis* (1900), 59 L. J. Q. B. 277.

There is no jurisdiction to require the owner in such a case to provide a means of escape from fire which would involve an encroachment on the lower floors: *Ibid*.

All the lower floors of a building up to the fourth, except the second, formed a

factory occupied by one tenant ; the second floor was not a factory ; the fifth, sixth and seventh floors formed another factory occupied by another tenant : *Held*, that the two factories were separate factories ; that the notices and the award under this section requiring a staircase to be constructed were bad, inasmuch as they had treated the factories as one factory ; that there was nothing in this Act giving the owner the right to enter upon one factory to construct works except for the benefit of *that* factory ; and that, as each of the occupiers produced his own power, the building was not a "tenement factory" within sect. 149 of this Act : *Toller v. Spiers and Pond*, [1903] 1 Ch. 362.

Sub-sect. (4). A lessor sued the lessee of a factory in the county court to recover the expenses incurred in providing an escape from fire, under a covenant in the lease "to pay . . . all . . . charges . . . and outgoing's whatsoever" : *Held*, that the county court judge has jurisdiction, whatever be the legal effect of the covenant, to apportion the expenses as may seem just and equitable to him under all the circumstances of the case : *Monk v. Arnold*, [1902] 1 K. B. 761.

The term "outgoing's" in a covenant by the lessee of a factory "to pay . . . all . . . outgoing's" includes expenses incurred by the lessor under this section : *Horne v. Franklin*, [1904] 2 K. B. 877.

The only procedure open to the lessor to recover such expenses is an application to the county court under this sub-section, when the judge may take into consideration any contract or covenant between the parties : *Ibid.* ; affirmed, C. A. [1905] 1 K. B. 479.

Sub-sect. (7). A ground floor was let to one tenant and was a factory ; a basement, ground floor and two upper stories were let by the same lessor to other tenants and were a factory ; there was no internal communication between the two factories, and they were entered from different streets ; the two top stories of the latter projected 66 ft. by 24 ft. over the former ; each factory supplied its own motive power ; an award was made under this section requiring works to be carried out which involved a trespass on the premises of the former factory : *Held*, that, inasmuch as each factory supplied itself independently with motive power and the two factories were not "within the same close or curtilage," the premises did not form a "tenement factory" within sect. 149 : *Brass v. London County Council*, [1904] 2 K. B. 336.

15. Every district council shall, in addition to any powers which they possess with reference to the prevention of fire, have power to make bye-laws providing for means of escape from fire in the case of any factory or workshop, and sections one hundred and eighty-two to one hundred and eighty-six of the Public Health Act, 1875, shall apply to any bye-laws so made.

Bye-laws for means of escape from fire.

This is new.

16.—(1) While any person employed in a factory or workshop is within the factory or workshop for the purpose of employment or meals, the doors of the factory or workshop, and of any room therein in which any such person is, must not be locked or bolted or fastened in such a manner that they cannot be easily and immediately opened from the inside.

Doors of factory or workshop to open from inside.

(2) In every factory or workshop the construction of which was not commenced before the first day of January one thousand eight hundred and ninety-six, the doors of each room in which more persons than ten are employed, shall, except in the case of sliding doors, be constructed so as to open outwards.

(3) A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

17.—(1) A court of summary jurisdiction may, on complaint by an inspector, and on being satisfied that any part of the ways, works, machinery, or plant used in a factory or workshop (including a steam boiler

Power to make order as to dangerous machine.

used for generating steam), is in such a condition that it cannot be used without danger to life or limb, by order, prohibit its use, or, if it is capable of repair or alteration, prohibit its use until it is duly repaired or altered.

(2) Where a complaint has been made under this section, the Court or a justice may, on application *ex parte* by the inspector, and on receiving evidence that the use of any such part of the ways, works, machinery, or plant, involves imminent danger to life, make an interim order prohibiting, either absolutely or subject to conditions, the use thereof until the earliest opportunity for hearing and determining the complaint.

(3) If there is any contravention of an order under this section, the person entitled to control the use of the part of the ways, works, machinery, or plant, shall be liable to a fine not exceeding forty shillings a day during the contravention.

The addition of "ways," "works," and "plant" is new: as is the inclusion of a "steam boiler." For the meaning of the three former terms, see the notes on sect. 1, sub-sect. (1) of the Employers Liability Act, 1880, *infra*.

The application of this section is extended by sects. 104, 105 and 106: *Vide infra*.

Power to make order as to unhealthy or dangerous factory or workshop.

18.—(1) A court of summary jurisdiction may, on complaint by an inspector, and on being satisfied that any place used as a factory or workshop or as part of a factory or workshop is in such a condition that any manufacturing process or handicraft carried on therein cannot be so carried on without danger to health or to life or limb, by order, prohibit the use of that place for the purpose of that process or handicraft, until such works have been executed as are in the opinion of the Court necessary to remove the danger.

(2) Provided that proceedings shall not be taken under this section in cases where proceedings might be taken by or at the instance of any district council under the provisions of the law relating to public health, unless the inspector is authorised to take proceedings under the foregoing provisions of this Act with respect to the enforcement of sanitary provisions in workshops, or with respect to matters punishable or remediable under the law relating to public health but not under this Act.

(3) If there is any contravention of an order under this section, the occupier of the place shall be liable to a fine not exceeding forty shillings a day during the contravention.

(iii) *Accidents.*

Notice of accidents causing death or bodily injury.

19. *This section is repealed and replaced by sect. 4 of the Notice of Accidents Act, 1906, which is printed at p. 859, infra. See also sect. 5 of that Act as to notice in factories of dangerous occurrences where no personal injury or disablement is caused.*

As to what is an "accident," see notes on "Defences to Claims" (d), under Workmen's Compensation Act, 1907, at p. 654, *infra*.

The application of the substituted section of the Notice of Accidents Act, 1906, and sects. 20, 21 and 22 of this Act, is extended by sects. 104, 105 and 106, *infra*.

These four sections also apply to lead, phosphorus, arsenical or mercurial poisoning, or anthrax: Sect. 73 (3).

20.—(1) Where a certifying surgeon receives in pursuance of this Act notice of an accident in a factory or workshop, he shall, with the least possible delay, proceed to the factory or workshop, and make a full investigation as to the nature and cause of the death or injury caused by that accident, and within the next twenty-four hours send to the inspector a report thereof.

Investigation of and report on accidents by certifying surgeon.

(2) The certifying surgeon, for the purpose only of an investigation under this section, shall have the same powers as an inspector, and shall also have power to enter any room in a building to which the person killed or injured has been removed.

21.—(1) Where a death has occurred by accident in a factory or workshop, the coroner shall forthwith advise the district inspector of the time and place of holding the inquest, and, unless an inspector or some person on behalf of the Secretary of State is present to watch the proceedings, the coroner shall adjourn the inquest, and shall, at least four days before holding the adjourned inquest, send to the inspector notice in writing of the time and place of holding the adjourned inquest.

Inquest in case of death by accident in factory or workshop.

Provided that, if the accident has not occasioned the death of more than one person, and the coroner has sent to the inspector notice of the time and place of holding the inquest at such time as to reach the inspector not less than twenty-four hours before the time of holding the inquest, it shall not be imperative on him to adjourn the inquest in pursuance of this section, if the majority of the jury think it unnecessary so to adjourn.

(2) Any relative of any person whose death may have been caused by the accident with respect to which the inquest is being held, and any inspector, and the occupier of the factory or workshop in which the accident occurred, and any person appointed by the order in writing of the majority of the workpeople employed in the factory or workshop, shall be at liberty to attend at the inquest, and, either in person or by his counsel, solicitor, or agent, to examine any witness, subject nevertheless to the order of the coroner.

22. Where it appears to the Secretary of State that a formal investigation of any accident occurring in a factory or workshop and its causes and circumstances is expedient, the Secretary of State may direct that such an investigation be held, and with respect to any such investigation the following provisions shall have effect:

Power to direct formal investigation of accidents.

- (1) The Secretary of State may appoint a competent person to hold the investigation, and may appoint any person or persons possessing legal or special knowledge to act as assessor or assessors in holding the investigation;
- (2) The person or persons so appointed (herein-after called "the Court") shall hold the investigation in open court in such manner and under such conditions as the Court may think most effectual for ascertaining the causes and circumstances of the accident, and enabling the Court to make the report in this section mentioned;
- (3) The Court shall have for the purpose of the investigation all the powers of a court of summary jurisdiction when acting as a court in hearing informations for offences against this Act, and all the powers of an

inspector under this Act, and in addition the following powers, namely:—

- (a) Power to enter and inspect any place or building the entry or inspection whereof appears to the Court requisite for the said purpose;
 - (b) Power, by summons signed by the Court, to require the attendance of all such persons as it thinks fit to call before it and examine for the said purpose, and for that purpose to require answers or returns to such inquiries as it thinks fit to make;
 - (c) Power to require the production of all books, papers, and documents which it considers important for the said purpose;
 - (d) Power to administer an oath and require any person examined to make and sign a declaration of the truth of the statements made by him in his examination:
- (4) Persons attending as witnesses before the Court shall be allowed such expenses as would be allowed to witnesses attending before a court of record; and in case of dispute as to the amount to be allowed, the same shall be referred by the Court to a master of one of His Majesty's superior courts, who on request, signed by the Court, shall ascertain and certify the proper amount of the expenses:
- (5) The Court holding an investigation under this section shall make a report to the Secretary of State, stating the causes of the accident and its circumstances, and adding any observations which the Court thinks right to make:
- (6) All expenses incurred in and about an investigation under this section (including the remuneration of any person appointed to act as assessor) shall be deemed to be part of the expenses of the Secretary of State in the execution of this Act:
- (7) Any person who without reasonable excuse (proof whereof shall lie on him) either fails, after having had the expenses (if any) to which he is entitled tendered to him, to comply with any summons or requisition of a court holding an investigation under this section, or prevents or impedes the Court in the execution of its duty, shall for every such offence be liable to a fine not exceeding ten pounds, and in the case of a failure to comply with a requisition for making any return or producing any document shall be liable to a fine not exceeding ten pounds for every day that such failure continues.

The Secretary of State may cause any special report of an inspector or any report of a court under this Part of this Act to be made public at such time and in such manner as he may think fit.

Sub-sects. (1) to (7) and the last paragraph are new. They reproduce sects. 45 and 46 of the Coal Mines Regulation Act, 1887, which were incorporated by reference by sect. 21 (1) of the Factory Act, 1895.

PART II.

EMPLOYMENT.

(i) *Hours and Holidays* (oo).

23. A woman (*p*), young person (*p*), or child (*p*) shall not be employed in a factory or workshop except during the period of employment herein-after mentioned.

Restrictions on period of employment of women, young persons, and children.

For penalties see sect. 137.

Employment is to be deemed continuous unless interrupted by an interval of at least half an hour : Sect. 156 (2).

24. With respect to the employment of women and young persons in a textile factory (*q*), the following regulations shall be observed :

Hours of employment in textile factories—
young persons and women.

(1) The period of employment, except on Saturday, shall either begin at six o'clock in the morning and end at six o'clock in the evening, or begin at seven o'clock in the morning and end at seven o'clock in the evening ;

(2) The period of employment on Saturday shall begin either at six o'clock or at seven o'clock in the morning ;

(3) Where the period of employment on Saturday begins at six o'clock in the morning, that period—

(a) If not less than one hour is allowed for meals, shall end at noon as regards employment in any manufacturing process, and at half-past twelve o'clock in the afternoon as regards employment for any purpose whatever ; and

(b) If less than one hour is allowed for meals, shall end at half-past eleven o'clock in the forenoon as regards employment in any manufacturing process, and at noon as regards employment for any purpose whatever ;

(4) Where the period of employment on Saturday begins at seven o'clock in the morning, that period shall end at half-past twelve o'clock in the afternoon as regards any manufacturing process, and at one o'clock in the afternoon as regards employment for any purpose whatever ;

(5) There shall be allowed for meals during the said period of employment in the factory—

(a) on every day except Saturday not less than two hours, of which one hour at the least, either at the same time or at different times, shall be before three o'clock in the afternoon ;

(b) on Saturday not less than half an hour ;

(oo) As to hours, holidays, and meal intervals in charitable and reformatory institutions, see sect. 5 (2) (a) of the Factory and Workshop Act, 1907 (printed

at p. 863, *infra*).

(*p*) Defined in sect. 156.

(*q*) Defined in sect. 149.

- (6) A woman or young person shall not be employed continuously for more than four hours and a half, without an interval of at least half an hour for a meal.

In sub-sects. (3) and (4) the hours at which employment is to terminate are all fixed at one hour earlier than under the Act of 1878.

Sub sect. (6). See sects. 28 and 39 *infra* as to employment for five hours continuously without an interval for a meal in certain industries.

Hours of
employment
in textile
factories—
children.

25. With respect to the employment of children (*p*) in a textile factory (*q*), the following regulations shall be observed :—

- (1) Children shall not be employed except on the system either of employment in morning and afternoon sets, or of employment on alternate days only.
- (2) The period of employment for a child in a morning set shall, except on Saturday, begin at the same hour as if the child were a young person, and end either—
 - (a) at one o'clock in the afternoon ; or
 - (b) if the dinner time begins before one o'clock, at the beginning of dinner time ; or
 - (c) if the dinner time does not begin before two o'clock, at noon.
- (3) The period of employment for a child in an afternoon set shall, except on Saturday, begin either—
 - (a) at one o'clock in the afternoon ; or
 - (b) at any later hour at which the dinner time terminates ; or
 - (c) if the dinner hour does not begin before two o'clock, and the morning set ends at noon, at noon ;
 and shall end at the same hour as if the child were a young person.
- (4) The period of employment for any child on Saturday shall begin and end at the same hour as if the child were a young person.
- (5) A child shall not be employed in two successive periods of seven days in the morning set, nor in two successive periods of seven days in an afternoon set, and a child shall not be employed on two successive Saturdays, nor on Saturday in any week if on any other day in the same week his period of employment has exceeded five hours and a half.
- (6) When a child is employed on the alternate day system the period of employment for such child and the time allowed for meals shall be the same as if the child were a young person, but the child shall not be employed on two successive days, and shall not be employed on the same day of the week in two successive weeks.
- (7) A child shall not on either system be employed continuously for more than four hours and a half without an interval of at least half an hour for a meal.

See Employment of Children Act, 1903, s. 3, sub-s. (3).

Sub-sect. (7). See sect. 39, and last note on preceding section.

See sect. 32 as to affixing notices of the system of the employment of children ; and sect. 87 (1) (iii) and the proviso thereto as to the liability of "owners" in "tenement factories."

(*p*) Defined in sect. 156.

(*q*) Defined in sect. 149.

26. With respect to the employment of women and young persons in a non-textile factory, and a workshop, the following regulations shall be observed :—

Hours of employment in non-textile factories and workshops—
young persons and women.

- (1) The period of employment, except on Saturday, shall (save as is in this Act specially excepted) either begin at six o'clock in the morning and end at six o'clock in the evening, or begin at seven o'clock in the morning and end at seven o'clock in the evening, or begin at eight o'clock in the morning and end at eight o'clock in the evening.
- (2) The period of employment on Saturday shall (save as is in this Act specially excepted) begin at six o'clock in the morning and end at two o'clock in the afternoon, or begin at seven o'clock in the morning and end at three o'clock in the afternoon, or begin at eight o'clock in the morning and end at four o'clock in the afternoon.
- (3) There shall be allowed for meals during the said period of employment in the factory or workshop—
 - (a) on every day except Saturday not less than one hour and a half, of which one hour at the least, either at the same time or at different times, shall be before three o'clock in the afternoon ; and
 - (b) on Saturday not less than half an hour.
- (4) A woman or a young person in a non-textile factory and a young person in a workshop shall not be employed continuously for more than five hours without an interval of at least half an hour for a meal.

See sects. 39, 42, 30, 37.

As to "laundries," see Factory and Workshop Act, 1907, s. 2, printed at p. 863, *infra*.

27. With respect to the employment of children (*r*) in a non-textile factory and a workshop, the following regulations shall be observed :—

Hours of employment in non-textile factories and workshops—
children.

- (1) Children shall not be employed except either on the system of employment in morning and afternoon sets, or (in a factory or workshop in which not less than two hours are allowed for meals on every day except Saturday) on the system of employment on alternate days only.
- (2) The period of employment for a child in the morning set on every day, including Saturday, shall begin at six or seven or eight o'clock in the morning and end either—
 - (a) at one o'clock in the afternoon ; or
 - (b) if the dinner time begins before one o'clock at the beginning of dinner time ; or
 - (c) if the dinner time does not begin before two o'clock, at noon.
- (3) The period of employment for a child in an afternoon set on every day, including Saturday, shall begin either—
 - (a) at one o'clock in the afternoon ; or
 - (b) at any hour later than half-past twelve at which the dinner time terminates ; or
 - (c) if the dinner time does not begin before two o'clock and the morning set ends at noon, at noon ;
 and shall end on Saturday at two o'clock in the afternoon, and on any

(*r*) Defined in sect. 155 (1).

other day at six or seven or eight o'clock in the evening, according as the period of employment for children in the morning set began at six or seven or eight o'clock in the morning.

- (4) A child shall not be employed in two successive periods of seven days in a morning set, nor in two successive periods of seven days in an afternoon set, and a child shall not be employed on Saturday in any week in the same set in which he has been employed on any other day of the same week.

- (5) When a child is employed on the alternate day system—

- (a) The period of employment for such a child shall, except on Saturday, either begin at six o'clock in the morning and end at six o'clock in the evening, or begin at seven o'clock in the morning and end at seven o'clock in the evening, or begin at eight o'clock in the morning and end at eight o'clock in the evening;
- (b) The period of employment for such child shall on Saturday begin at six or seven o'clock in the morning, and end at two o'clock in the afternoon, or begin at eight o'clock in the morning, and end at four o'clock in the afternoon;
- (c) There shall be allowed to such child for meals during the said period of employment not less, on any day except Saturday, than two hours, and on Saturday than half an hour; but
- (d) The child shall not be employed in any manner on two successive days, and shall not be employed on the same day of the week in two successive weeks.

- (6) A child shall not on either system be employed continuously for more than five hours without an interval of at least half an hour for a meal.

See sect. 36.

Hours of
employment
in print
works and
bleaching
and dyeing
works.

28. In print works and bleaching and dyeing works the period of employment for a woman, young person, and child, and the times allowed for meals shall be the same as if the works were a textile factory, and the regulations of this Act with respect to the employment of women, young persons, and children in a textile factory shall apply accordingly, as if print works and bleaching and dyeing works were textile factories; save that nothing in this section shall prevent the continuous employment of a woman, young person, or child in the works for five hours without an interval of half an hour for a meal.

Special pro-
visions as to
employment
in women's
workshops.

29.—(1) In a workshop which is conducted on the system of not employing therein either children or young persons, and the occupier of which has served on an inspector notice of his intention to conduct his workshop on that system—

- (a) The period of employment for a woman(s) shall, except on Saturday, be a specified period of twelve hours taken between six o'clock in the morning and ten o'clock in the evening, and shall on Saturday be a specified period of eight hours, taken between six o'clock in the morning and four o'clock in the afternoon; and

(s) Defined in sect. 156 (1).

- (b) There shall be allowed to a woman for meals and absence from work during the period of employment, a specified period not less, except on Saturday, than one hour and a half, and on Saturday than half an hour.

(2) Where the occupier of a workshop has served on an inspector notice of his intention to conduct that workshop on the system of not employing children or young persons therein, the workshop shall be deemed to be conducted on that system until the occupier changes it, and no change shall be made until the occupier has served on the inspector notice of his intention to change the system, and until the change a child or young person employed in the workshop shall be deemed to be employed contrary to the provisions of this Act. A change in the system shall not be made oftener than once a quarter, unless for special cause allowed in writing by an inspector.

30. In a non-textile factory or workshop where a woman or young person has not been actually employed for more than eight hours on any day in a week, and notice of such non-employment has been affixed in the factory or workshop and served on the inspector, the period of employment on Saturday in that week for that woman or young person may be from six o'clock in the morning to four o'clock in the afternoon, with an interval of not less than two hours for meals.

Special provision as to eight hours employment of women and young persons.

31.—(1) A child must not, except during the period of employment, be employed in the business of a factory or workshop outside the factory or workshop on any day during which the child is employed in the factory or workshop.

Restriction on employment inside and outside factory or workshop on same day.

(2) A woman or young person must not, except during the period of employment, be employed in the business of a factory or workshop outside the factory or workshop on any day during which the woman or young person is employed in the factory or workshop both before and after the dinner hour.

(3) For the purposes of this section a woman, young person, or child to or for whom any work is given out, or who is allowed to take out any work to be done by him or her outside a factory or workshop, shall be deemed to be employed outside the factory or workshop on the day on which the work is so given or taken out.

(4) If a woman or young person is employed by the occupier of a factory or workshop on the same day, both in the factory or workshop, and in a shop, then—

- (a) the whole time during which that woman or young person is employed shall not exceed the number of hours permitted by this Act for her or his employment in the factory or workshop on that day; and
- (b) if the woman or young person is employed in the shop, except during the period of employment fixed by the occupier, and specified in a notice affixed in the factory or workshop in pursuance of this Act, the occupier shall make the prescribed entry in the general register with regard to her or his employment.

(5) This Act shall apply as if any woman, young person, or child employed in contravention of this section were employed in a factory or workshop contrary to the provisions of this Act.

Sub-sect. (4) is new. See Shop Hours Act, 1892, s. 3, printed *infra*.

Notice fixing hours of employment, &c.

32.—(1) The occupier of every factory and workshop may fix within the limits allowed by this Act, and shall, subject to any special exceptions made by or in pursuance of this Act, specify in a notice which must be affixed in the factory or workshop—

- (a) the period of employment ;
- (b) the times allowed for meals ; and
- (c) whether the children are employed on the system of morning and afternoon sets or of alternate days.

(2) In a factory or workshop where such a notice is required to be affixed, the period of employment, the times allowed for meals, and the system of employment for all the children in the factory or workshop, shall be those for the time being specified in the notice.

(3) A change in the said period or times or system shall not be made until the occupier has served on an inspector, and affixed in the factory or workshop, notice of his intention to make the change, and shall not be made oftener than once a quarter, unless for special cause allowed in writing by an inspector.

(4) Where an inspector, by notice in writing, names a public clock, or some other clock open to public view, for the purpose of regulating the period of employment in a factory or workshop, the period of employment and the times allowed for meals in that factory or workshop shall be regulated by that clock.

Meal times to be simultaneous, and employment during meal times forbidden.

33. With respect to meals the following regulations shall (save as is in this Act specially excepted) be observed in a factory and workshop :—

- (1) All women, young persons, and children employed therein shall have the times allowed for meals at the same hour of the day ; and
- (2) A woman, young person, or child shall not during any part of the times allowed for meals in the factory or workshop, be employed in the factory or the workshop, or be allowed to remain in a room in which a manufacturing process or handicraft is then being carried on.

See sect. 40.

Sub-sect. (2). A young person, contrary to orders and for his own amusement, oiled machinery during the meal hour : *Held*, that the “occupiers” should be convicted under this section : *Prior v. Slaithwaite*, *§c.*, [1898] 1 Q. B. 881.

Prohibition of Sunday employment.

34. A woman, young person, or child shall not (save as is in this Act specially excepted) be employed on Sunday in a factory or workshop.

See sects. 42, 47, 48, 54 (1) (d).

Annual holidays and half holidays.

35.—(1) Subject to any special exceptions made by or in pursuance of this Act, the occupier of a factory or workshop shall allow in each year to every woman, young person, and child employed in the factory or workshop the following holidays :—

In England there shall be allowed as whole holidays—

Christmas Day, Good Friday, and every Bank holiday, unless, in lieu of any of those days, another whole holiday or two half holidays, fixed by the occupier, be allowed.

In Scotland there shall be allowed—

- (a) In burghs or police burghs, as whole holidays, the two days set apart by the Church of Scotland for the observance of the Sacramental Fast in the parish, or, if those fast days have been abolished or discontinued, two days, not less than three months apart, to be fixed by the town council; elsewhere, two whole holidays, not less than three months apart, fixed by the occupier;
- (b) Eight half holidays fixed by the occupier, but a whole holiday, fixed by the occupier, may be allowed in lieu of any two half holidays.

In Ireland there shall be allowed—

- (a) Christmas Day;
- (b) Any two of the following days, fixed by the occupier, namely, the seventeenth of March (when it does not fall on a Sunday), Good Friday, Easter Monday, and Easter Tuesday;
- (c) Six half holidays, fixed by the occupier, but a whole holiday, fixed by the occupier, may be allowed in lieu of any two half holidays.

(2) At least half of the said whole holidays or half holidays shall be allowed between the fifteenth day of March and the first day of October in every year.

(3) A notice of every whole holiday or half holiday must be affixed in the factory or workshop during the first week in January, and a copy thereof must on the same day be forwarded to the inspector for the district, and unless the notice has been so affixed and sent cessation from work shall not be deemed to be a whole holiday or a half holiday:

Provided that—

- (a) this sub-section does not apply in the case of a whole holiday in a factory or workshop in England or Wales if the whole holiday is Christmas Day or Good Friday or a Bank holiday;
- (b) any such notice may be changed by a subsequent notice affixed and sent in like manner not less than fourteen days before the holiday or half holiday to which it applies.

(4) A half holiday shall comprise at least one half of the period of employment for women and young persons on some day other than Saturday, or a day substituted for Saturday.

(5) A woman, young person, or child who—

- (a) on a whole holiday fixed by or in pursuance of this section for a factory or workshop is employed in the factory or workshop; or
- (b) on a half holiday fixed in pursuance of this section for a factory or workshop is employed in the factory or workshop during the portion of the period of employment assigned for that half holiday;

shall be deemed to be employed contrary to the provisions of this Act.

(6) If in a factory or workshop such whole holidays or half holidays as are required by this section are not fixed in conformity therewith, the occupier of the factory or workshop shall be liable to a fine not exceeding five pounds.

(ii) *Special Exceptions as to Hours and Holidays.*

Employment
between
9 a.m. and
9 p.m. in
certain cases.

36. Where it is proved to the satisfaction of a Secretary of State that the customs or exigencies of the trade carried on in any class of non-textile factories or workshops, or parts thereof, either generally or when situate in any particular locality, require that the special exception hereafter in this section mentioned should be granted, and that the grant can be made without injury to the health of the women, young persons, and children, affected thereby, he may, by Special Order, grant to that class of factories or workshops or parts thereof, a special exception that the period of employment for women and young persons therein, if so fixed by the occupier and specified in the notice, may on any day except Saturday begin at nine o'clock in the morning and end at nine o'clock in the evening, and in that case the period of employment for a child in a morning set shall begin at nine o'clock in the morning, and the period of employment for a child in an afternoon set shall end at eight o'clock in the evening.

See the Special Order dated Dec. 26, 1907 (St. R. & O. 1907, Factory and Workshop, p. 134): see sect. 126, *infra*.

Employment
of male
young per-
sons above
16 in lace
factories.

37.—(1) In the part of a textile factory in which a machine for the manufacture of lace is moved by steam, water, or other mechanical power, the period of employment for any male young person above the age of sixteen years may be between four o'clock in the morning and ten o'clock in the evening, if he is employed in accordance with the following conditions; namely:—

- (a) Where he is employed on any day before the beginning or after the end of the ordinary period of employment, there must be allowed him for meals and absence from work between the above-mentioned hours of four in the morning and ten in the evening not less than nine hours; and
- (b) Where he is employed on any day before the beginning of the ordinary period of employment, he must not be employed on the same day after the end of that period; and
- (c) Where he is employed on any day after the end of the ordinary period of employment, he must not be employed next morning before the beginning of the ordinary period of employment.

(2) For the purpose of this exception the ordinary period of employment means the period of employment for women or young persons under the age of sixteen years in the factory, or, if none are employed, means such period as can under this Act be fixed for the employment of women and young persons under the age of sixteen years in the factory, and notice of such period shall be affixed in the factory.

Employment
of male
young per-
sons above 16
in bakehouses.

38.—(1) In the part of a bakehouse in which the process of baking bread is carried on, the period of employment for any male young person above the age of sixteen years may be between five o'clock in the morning and nine

o'clock in the evening, if he is employed in accordance with the following conditions; namely:—

- (a) Where he is employed on any day before the beginning or after the end of the ordinary period of employment, there must be allowed him for meals and absence from work between the above-mentioned hours of five in the morning and nine in the evening not less than seven hours; and
- (b) Where he is employed on any day before the beginning of the ordinary period of employment, he must not be employed on the same day after the end of that period; and
- (c) Where he is employed on any day after the end of the ordinary period of employment, he must not be employed next morning before the beginning of the ordinary period of employment.

(2) For the purposes of this exception the ordinary period of employment means the period of employment for women or young persons under the age of sixteen years in the bakehouse, or, if none are employed, means such period as can under this Act be fixed for the employment of women and young persons under the age of sixteen years in the bakehouse, and notice of that period shall be affixed in the bakehouse.

See sects. 97—102 as to “bakehouses” generally.

39.—(1) In any of the textile factories to which this exception applies, a woman, young person, or child may, between the first day of November and the last day of March next following, be employed continuously for five hours without an interval for a meal; provided that—

- (a) The period of employment fixed by the occupier and specified in the notice begins at seven o'clock in the morning; and
- (b) The whole time between that hour and eight o'clock is allowed for meals.

(2) This exception applies to textile factories solely used for—

- (a) The making of elastic web; or
- (b) The making of ribbon; or
- (c) The making of trimming.

(3) Where it is proved to the satisfaction of the Secretary of State that in any class of textile factories, either generally or when situate in any particular locality, the customary habits of the persons employed therein require the extension thereto of this exception, and that the manufacturing process carried on therein is of a healthy character, and the extension can be made without injury to the health of the women, young persons, and children, affected thereby, he may, by Special Order, extend this exception accordingly. The limitation of this exception to the period between the first day of November and the following last day of March shall not, if the Secretary of State by Special Order so directs, apply to hosiery factories.

See Special Orders of Dec. 20, 1882 (St. R. & O. Rev. 1904, Vol. IV., Factory and Workshop, p. 10; L. G., Dec. 22, 1882), and of May 12, 1902 (*ibid.* p. 11; L. G., May 13, 1902).

Sub-sect. (3). The last three lines are new.

Different meal times for different sets, and employment during meal times.

40.—(1) The provisions of this Act, which require that all the women, young persons, and children employed in a factory or workshop must have the times allowed for meals at the same hour of the day shall not apply to the following factories, namely :—

- (i) Blast furnaces (*t*), or
- (ii) Iron mills (*t*), or
- (iii) Paper mills (*t*), or
- (iv) Glass works (*t*), or
- (v) Letter-press printing works (*t*).

(2) The provisions of this Act which require that a woman, young person, or child shall not during the times allowed for meals be employed or be allowed to remain in a room in which a manufacturing process or handicraft is being carried on shall not apply to the following factories, namely—

- (i) Iron mills, or
- (ii) Paper mills, or
- (iii) Glass works (except any part in which the materials are mixed, and, in the case of glass works where flint glass is made, any part in which the work of grinding, cutting, or polishing is carried on), or
- (iv) Letter-press printing works.

(3) In that part of any print works (*t*) or bleaching and dyeing works (*t*) in which the process of dyeing or open-air bleaching is carried on—

- (i) A male young person may have the times allowed him for meals at different hours of the day from other young persons and women and children employed in the factory ;
- (ii) A male young person may during the times allowed for meals to any other young person or to any woman or child be employed or be allowed to remain in a room in which a manufacturing process is carried on ; and
- (iii) During the times allowed for meals to a male young person any other young person or any woman or child may be employed in the factory or be allowed to remain in a room in which a manufacturing process is carried on.

(4) Where it is proved to the satisfaction of the Secretary of State that in any class of factories or workshops or parts thereof it is necessary, by reason of the continuous nature of the process or of special circumstances affecting that class, to extend thereto both or either of the following exceptions, namely—

- (a) an exception permitting the women, young persons, and children employed in the factory or workshop to have the times allowed for meals at different hours of the day ; or
 - (b) an exception permitting women, young persons, and children, during the times allowed for meals in the factory or workshop, to be employed in the factory or workshop or to be allowed to remain in a room in which a manufacturing process or handicraft is being carried on,
- and that the extension can be made without injury to the health of the women, young persons, and children, affected thereby, he may, by Special Order, extend both or either of those exceptions accordingly.

(*t*) Defined in Sched. VI., Pt. 1.

Sub-sect. (4). Both these exceptions have been extended by the following orders:—Two of Dec. 20, 1882 (St. R. & O. Rev. 1904, Vol. IV., Factory and Workshop, pp. 12, 13; L. G., Dec. 22, 1882); two of Feb. 24, 1887 (*ibid.* p. 11; L. G., March 1, 1887); of May 1, 1896 (*ibid.* p. 15; L. G., May 8, 1896); of July 20, 1899 (*ibid.* p. 16; L. G., July 23, 1899); of Sept. 6, 1899 (*ibid.* p. 17; L. G., Sept. 12, 1899); of March 11, 1903 (*ibid.* p. 19; L. G., March 13, 1903); of June 23, 1904 (St. R. & O. 1904, p. 143; L. G., June 28, 1904).

41.—(1) The provisions of this Act as to period of employment, times for meals, and holidays, shall not apply to young persons and women engaged—
(a) in processes in the preserving and curing of fish which must be carried out immediately on the arrival of the fishing boats in order to prevent the fish from being destroyed or spoiled; or

Special exceptions as to fish and fruit preserving.

(b) in the process of cleaning and preparing fruit so far as is necessary to prevent the spoiling of the fruit immediately on its arrival at a factory or workshop during the months of June, July, August, and September, but this exception shall be subject to such conditions as the Secretary of State may by Special Order prescribe.

(2) Where an occupier avails himself of this exception, the notice required to be served and affixed by an occupier of a factory or workshop availing himself of any special exception, need not specify the hours for the beginning and end of the period of employment, or the times to be allowed for meals.

This is new.

Sub-sect. (1) (b). See order of Sept. 11, 1907 (St. R. & O. 1907, Factory and Workshop, p. 135).

42. In the case of creameries in which women and young persons are employed, the Secretary of State may, by Special Order, vary the beginning and end of the daily period of employment of those women and young persons, and the times allowed for their meals, and allow their employment for not more than three hours on Sundays and holidays: Provided that the order shall not permit any excess over either the daily or the weekly maximum number of hours of employment allowed by this Act.

Special exceptions as to creameries.

This is new.

See order of Oct. 23, 1903 (St. R. & O. Rev. 1904, Vol. IV., Factory and Workshop, p. 21; L. G. Oct. 27, 1903), repealing the order of June 9, 1902.

43. Where it is proved to the satisfaction of the Secretary of State that the customs or exigencies of the trade carried on in any class of non-textile factories or workshops, either generally or when situate in any particular locality, require some other day in the week to be substituted for Saturday as regards the hour at which the period of employment for women, young persons, and children is required by this Act to end on Saturday, he may, by Special Order, grant to that class of factories or workshops a special exception, authorising the occupier of every such factory and workshop to substitute by a notice affixed in his factory or workshop some other day for Saturday, and in that case this Act shall apply in the factory or workshop in like manner as if the substituted day were Saturday, and Saturday were an ordinary work day. In the case of newspaper printing offices, he may by such order authorise the substitution of some other day for Saturday in respect of some of the young persons therein employed.

Substitution of another day for Saturday.

See orders of Feb. 3, 1912 (St. R. & O. Rev. 1904, Vol. IV., Factory and Workshop, p. 24); of Dec. 26, 1907 (St. R. & O. 1907, p. 137).

Saturday
employment
in Turkey
red dyeing.

44. In the process of Turkey red dyeing the period of employment for women and young persons on Saturday may extend until half-past four o'clock in the afternoon, but the additional number of hours so worked shall be computed as part of the week's limit of work, which must in no case be exceeded.

See sect. 53.

Holidays on
different
days for
different sets.

45. Where it is proved to the satisfaction of the Secretary of State that the customs or exigencies of the trade carried on in any class of non-textile factories or workshops, either generally or when situate in any particular locality, require that the special exception hereafter in this section mentioned should be granted, he may, by Special Order, grant to that class of factories or workshops a special exception authorising the occupier of any such factory or workshop to allow all or any of the annual whole holidays or half holidays on different days to any of the women, young persons, and children employed in his factory or workshop, or to any sets of those women, young persons, and children, and not on the same days.

See order of Dec. 20, 1882 (St. R. & O. Rev. 1904, Vol. IV., Factory and Workshop, p. 24; L. G., Dec. 22, 1882).

Employment
inside and
outside on
the same day.

46. Where it is proved to the satisfaction of the Secretary of State that the customs or exigencies of the trade carried on in any class of factories or workshops, or parts thereof, either generally or when situate in any particular locality, require that the trade should be excepted from the operation of the provisions of this Act relating to employment inside and outside a factory or workshop on the same day, he may, by Special Order, grant to that class of factories or workshops, or parts thereof, such special exception as may be necessary.

Hours and
holidays in
factory or
workshop
of Jewish
occupier.

47. Where the occupier of a factory or workshop is a person of the Jewish religion—

- (1) If he keeps his factory or workshop closed on Saturday until sunset, he may employ women and young persons on Saturday from after sunset until nine o'clock in the evening; or
- (2) If he keeps his factory or workshop closed on Saturday both before and after sunset, he may employ women and young persons one hour on every other day in the week (not being Sunday), in addition to the hours allowed by this Act, so that such hour be at the beginning or end of the period of employment, and be not before six o'clock in the morning or after nine o'clock in the evening.

Sunday
employment
of Jews in
factory or
workshop
of Jewish
occupier.

48. Where the occupier of a factory or workshop is a person of the Jewish religion, a woman or young person of the Jewish religion may be employed on Sunday, subject to the following conditions:—

- (1) The factory or workshop must be closed on Saturday and must not be open for traffic on Sunday; and
- (2) The occupier must not avail himself of the exception authorising the employment of women and young persons on Saturday evening, or for an additional hour during any other day in the week.

Where the occupier avails himself of this exception, this Act shall apply

to the factory or workshop in like manner as if in the provisions thereof respecting Sunday the word Saturday were substituted for Sunday, and in the provisions thereof respecting Saturday the word Sunday, or, if the occupier so specify in the notice, the word Friday were substituted for Saturday.

In *Goldstein v. Vaughan*, [1897] 1 Q. B. 549, the Jewish occupier of a workshop employed labour on Sunday, and permitted his customers on that day to send or fetch away garments in pursuance of contracts previously made: *Held*, that the workshop was not, on that account, "open for traffic on Sunday."

Overtime.

49.—(1) In the non-textile factories and workshops or parts thereof and warehouses to which this exception applies, the period of employment for women on any day except Saturday, or any day substituted for Saturday, may be between six o'clock in the morning and eight o'clock in the evening, or between seven o'clock in the morning and nine o'clock in the evening, or between eight o'clock in the morning and ten o'clock in the evening, if they are employed in accordance with the following conditions, namely:—

Overtime employment of women for press of work.

- (a) There must be allowed to every woman for meals during the period of employment not less than two hours, of which half an hour must be after five o'clock in the evening; and
- (b) A woman must not be so employed in the whole for more than three days in any one week; and
- (c) Overtime employment under this section must not take place in a factory or workshop on more than thirty days in the whole in any twelve months, and in reckoning that period of thirty days, every day on which any woman has been employed overtime is to be taken into account.

(2) This exception applies to the non-textile factories and workshops and parts thereof and warehouses specified in the Second Schedule to this Act, except that it does not apply to a workshop or part thereof which is conducted on the system of not employing any young person or child therein.

(3) Where it is proved to the satisfaction of the Secretary of State that in any class of non-textile factories or workshops or parts thereof it is necessary, by reason of the material which is the subject of the manufacturing process or handicraft therein being liable to be spoiled by the weather, or by reason of press of work arising at certain recurring seasons of the year, or by reason of the liability of the business to a sudden press of orders arising from unforeseen events, to employ women in manner authorised by this exception, and that such employment will not injure the health of the women affected thereby, he may, by Special Order, extend this exception to those factories or workshops or parts thereof.

See sect. 60. *infra*.

Sub-sect. (3). See the following orders: Of Dec. 29, 1903 (St. R. & O. Rev. 1904, Vol. IV., Factory and Workshop, p. 25; L. G., Jan. 1, 1904), which revokes all previous orders; and of Nov. 15, 1904 (St. R. & O. 1904, p. 144; L. G., Nov. 18, 1904).

Overtime
employment
of women on
perishable
articles.

50.—(1) In the factories and workshops and parts thereof to which this exception applies, the period of employment for a woman may on any day except Saturday, or any day substituted for Saturday, be between six o'clock in the morning and eight o'clock in the evening, or between seven o'clock in the morning and nine o'clock in the evening, if she is employed in accordance with the following conditions, namely:—

- (a) There must be allowed her for meals not less than two hours, of which half an hour must be after five o'clock in the evening; and
- (b) She must not be so employed in the whole for more than three days in any one week; and
- (c) Overtime employment under this section must not take place in a factory or workshop on more than fifty days in the whole in any twelve months; and in reckoning that period of fifty days, every day on which any woman has been employed overtime is to be taken into account.

(2) This exception applies to every factory and workshop or part thereof in which is carried on—

- (a) the process of making preserves from fruit; or
- (b) the process of preserving or curing fish; or
- (c) the process of making condensed milk.

(3) Where it is proved to the satisfaction of the Secretary of State that in any class of non-textile factories or workshops or parts thereof it is necessary, by reason of the perishable nature of the articles or materials which are the subject of the manufacturing process or handicraft, to employ women in manner authorised by this exception, and that such employment will not injure the health of the women employed, he may, by Special Order, extend this exception to those factories or workshops or parts thereof.

Sub-sect. (3). The order of Aug. 18, 1893, is overridden by this section.
See sect. 60, *infra*.

Overtime
employment
on incom-
plete process.

51.—(1) If in any factory or workshop or part thereof to which this exception applies, the process in which a woman, young person, or child is employed, is in an incomplete state at the end of the period of employment of the woman, young person, or child, the woman, young person, or child, may on any day except Saturday, or any day substituted for Saturday, be employed for a further period not exceeding thirty minutes:

Provided that those further periods, when added to the total number of hours of the periods of employment of the woman, young person, or child in that week, do not raise the total above the number otherwise allowed under this Act.

(2) This exception applies to the factories and workshops following, namely:—

- (a) Bleaching and dyeing works;
- (b) Print works;
- (c) Iron mills in which male young persons are not employed during any part of the night;
- (d) Foundries in which male young persons are not employed during any part of the night; and

(e) Paper mills in which male young persons are not employed during any part of the night.

(3) Where it is proved to the satisfaction of the Secretary of State that in any class of non-textile factories or workshops or parts thereof the time for the completion of a process cannot by reason of the nature thereof be accurately fixed, and that the extension to that class of factories or workshops or parts thereof of this exception can be made without injury to the health of the women, young persons, and children, affected thereby, he may by Special Order extend this exception accordingly.

See order of Dec. 20, 1882 (L. G., Dec. 22, 1882; St. R. & O. Rev. 1904, Vol. IV., Factory and Workshop, p. 27).

See sect. 60, *infra*.

52. Where it appears to the Secretary of State that factories driven by water power are liable to be stopped by drought or flood, he may, by Special Order, grant to those factories a special exception permitting the employment of women and young persons during a period of employment from six o'clock in the morning until seven o'clock in the evening, on such conditions as he thinks proper, but so as that no person shall be deprived of the meal hours by this Act provided, nor be so employed on Saturday, or any day substituted for Saturday, and that as regards factories liable to be stopped by drought, the special exception shall not extend to more than ninety-six days in any period of twelve months, and as regards factories liable to be stopped by floods, the special exception shall not extend to more than forty-eight days in any period of twelve months. This overtime shall not extend in any case beyond the time already lost during the previous twelve months.

Overtime employment in factories driven by water.

See order of Dec. 20, 1882 (L. G., Dec. 22, 1882; St. R. & O. Rev. 1904, Vol. IV., Factory and Workshop, p. 28).

53. A woman or young person may on any day except Saturday, or any day substituted for Saturday, be employed beyond the period of employment, so far as is necessary for the purpose only of preventing any damage which may arise from spontaneous combustion in the process of Turkey red dyeing, or from any extraordinary atmospheric influence in the process of open-air bleaching.

Overtime employment in Turkey red dyeing and open-air bleaching.

See sect. 44.

Night Work.

54.—(1) In the factories and workshops to which this exception applies, a male young person of fourteen years of age and upwards may be employed during the night (*v*), if he is employed in accordance with the following conditions, namely—

Night employment of male young persons of 14.

- (a) The period of employment must not exceed twelve consecutive hours, and must begin and end at the hours specified in the notice in this Act mentioned; and
- (b) The provisions of this Part of this Act with respect to the allowance of times for meals shall be observed with the necessary modifications as to the hour at which the meal times are fixed; and

(*v*) Defined sect. 156 (1).

- (c) A young person employed during any part of the night must not be employed during any part of the twelve hours preceeding or succeeding the period of employment; and
- (d) He must not be employed on more than six nights, or in the case of blast furnaces or paper mills seven nights, in any two weeks; provided that this condition shall not prevent the employment of male young persons in three shifts of not more than eight hours each, if there is an interval of two unemployed shifts between each two shifts of employment; and
- (e) In the case of blast furnaces, iron mills, letter-press printing works, or paper mills, he must not be employed during the night in any process other than a process incidental to the business of the factory as described in Part I. of the Sixth Schedule to this Act.

(2) The provisions of this Act with respect to the period of employment on Saturday, and with respect to the allowance to young persons of whole or half holidays, shall not apply to a male young person employed in day and night turns in pursuance of this exception.

(3) This exception applies to the following factories, namely:—

- (a) Blast furnaces,
- (b) Iron mills,
- (c) Letter-press printing works, and
- (d) Paper mills.

(4) Where it is proved to the satisfaction of the Secretary of State that in any class of non-textile factories or workshops, or parts thereof, it is necessary by reason of the nature of the business requiring the process to be carried on throughout the night to employ male young persons of sixteen years of age and upwards at night, and that such employment will not injure the health of the male young persons employed, he may, by Special Order, extend this exception to those factories or workshops or parts thereof so far as regards young persons of the age of sixteen years and upwards.

Sub-sect. (4). See the following orders:—Or March 11, 1903 (L. G., March 13, 1903; St. R. & O. Rev. 1904, Vol. IV., Factory and Workshop, p. 29); of May 4, 1903 (L. G., May 8, 1903; *ibid.*, p. 30), revoking the orders of Nov. 16, 1895, and Aug. 22, 1902; of Aug. 9, 1904 (St. R. & O. 1904, p. 145); of Feb. 18, 1905 (L. G., Feb. 21, 1905; St. R. & O. 1905, p. 88).

Night employment of male young persons of 14 in glass works.

55. In glass works a male young person of fourteen years of age and upwards may work according to the accustomed hours of the works, if he is employed in accordance with the following conditions, namely:—

- (a) The total number of hours of the periods of employment must not exceed sixty in any one week; and
- (b) The periods of employment must not exceed fourteen hours in four separate turns per week, or twelve hours in five separate turns per week, or ten hours in six separate turns per week, or any less number of hours in the accustomed number of separate turns per week, so that the number of turns do not exceed nine; and
- (c) He must not work in any turn without an interval of time not less than one full turn; and

- (d) He must not be employed continuously for more than five hours without an interval of at least half an hour for a meal; and
- (e) He must not be employed on Sunday.

56. In a factory or workshop in which the process of printing newspapers is carried on on not more than two nights in the week, a male young person above the age of sixteen years may be employed at night during not more than two nights in a week, as if he were no longer a young person:

Night employment of male young persons of 16 in printing newspapers.

Provided that he must not in pursuance of this exception be employed more than twelve hours in any consecutive period of twenty-four hours.

The last seven words are new.

Intermittent Employment.

57.—(1) The regulations of this Act with respect to the period of employment for women (*x*) shall not apply to flax scutch mills (*y*) which are conducted on the system of not employing either young persons or children therein, and which are worked intermittently, and for periods only which do not exceed in the whole six months in any year.

Exemption for certain flax scutch mills.

(2) A flax scutch mill shall not be deemed to be conducted on the system of not employing either young persons or children therein, until the occupier has served on an inspector notice of his intention to conduct the mill on that system.

This section is repealed by the Employment of Women Act, 1907 (7 Edw. 7, c. 10).

Supplemental.

58.—(1) Where it appears to the Secretary of State—

- (a) That the adoption of any special means or provision for the cleanliness or ventilation of a factory or workshop is required for the protection of the health of women, young persons, or children, employed, in pursuance of an exception under this part of this Act, either for a longer period than is otherwise allowed by this Act, or at night; or

Power to impose sanitary requirements as condition of special exceptions.

- (b) That the adoption of a special provision as to the total number of hours of employment in each week, the periods of employment, and the intervals between such periods, is required for the protection of the health of any women or young persons employed in pursuance of such an exception at night,

he may, by Special Order, direct that the adoption of the means or provision shall be a condition of such employment.

(2) If it appears to the Secretary of State that the adoption of any such means or provision is no longer required, or is, having regard to all the circumstances, inexpedient, he may, by Special Order, rescind the order directing the adoption without prejudice to the subsequent making of another order.

See orders of Dec. 20, 1882 (St. R. & O. Rev. 1904, Vol. IV., Factory and Workshop, p. 31; L. G., Dec. 22, 1882); of Sept. 11, 1907, cited in note to sect. 41.

(*x*) See sect. 26.

(*y*) See sect. 149, and Sched. VI., Pt. 1.

Power to rescind orders as to special exceptions.

59. Where an exception has been granted or extended under this Act by an order of the Secretary of State, and it appears to the Secretary of State that the exception is injurious to the health of the women, young persons, or children employed in, or is no longer necessary for the carrying on of the business in, the class of factories or workshops or parts thereof to which the exception was so granted or extended, he may, by Special Order, rescind the grant or extension, without prejudice to the subsequent making of another order.

Notices, registers, &c. relating to special exceptions.

60.—(1) An occupier of a factory or workshop, not less than seven days before he avails himself of any special exception made by or in pursuance of this Act, shall serve on the inspector for the district, and affix in his factory or workshop, notice of his intention so to avail himself, and whilst he avails himself of the exception shall keep the notice so affixed.

(2) Before the service of the notice on the inspector the special exception shall not be deemed to apply to the factory or workshop, and after the service of the notice on the inspector it shall not be competent in any proceeding under this Act for the occupier to prove that the exception does not apply to his factory or workshop, unless he has previously served on the inspector for the district notice that he no longer intends to avail himself of the exception.

(3) The notice so served and affixed must, except as otherwise provided by this Act, specify the hours for the beginning and end of the period of employment, and the times to be allowed for meals to every woman, young person, and child where they differ from the ordinary hours or times.

(4) An occupier of a factory or workshop shall enter in the prescribed register and report to the inspector for the district the prescribed particulars respecting the employment of a woman, young person, or child in pursuance of a special exception; and, in the case of employment overtime, he shall also cause a notice containing the prescribed particulars respecting the employment to be kept affixed in the factory or workshop during the prescribed time, and he shall send the report required by this sub-section to the inspector not later than eight o'clock in the evening on which any woman, young person, or child is employed overtime in pursuance of the exception.

(5) Where the occupier of a factory or workshop avails himself of a special exception made by or in pursuance of this Act, and a condition for availing himself of that exception (whether specified in this Act, or in an order of the Secretary of State made under this Act) is not observed in that factory or workshop, then

(a) If the condition relates to the cleanliness, ventilation, or overcrowding of the factory or workshop, the factory or workshop shall be deemed not to be kept in conformity with this Act; and

(b) In any other case a woman, young person, or child, employed in the factory or workshop, in alleged pursuance of the exception, shall be deemed to be employed contrary to the provisions of this Act.

(6) Where an occupier of a factory or workshop has served on an inspector a report in pursuance of this section of his intention to employ any persons overtime by virtue of a special exception, the report shall, unless withdrawn,

be *prima facie* evidence in any proceedings under this Act that the occupier has in fact employed persons overtime in accordance with the report.

Sub-sect. (6) is new.

Sub-sect. (4). As to "domestic" factories, see sect. 111 (2).

As to notices and registers, see sects. 128 (1) (c), 129 (1) (d).

As to "laundries," see Factory and Workshop Act, 1907, s. 2, printed *infra*, at p. 863.

(iii) *Fitness for Employment.*

61. An occupier of a factory or workshop shall not knowingly allow a woman or girl to be employed therein within four weeks after she has given birth to a child.

Prohibition of employment of women after childbirth.

The inclusion of "girls" is new. The similar provision as to "laundries" (sect. 103 (1) (f)) does not mention "girls."

62. A child under the age of twelve years must not be employed in a factory or workshop unless lawfully so employed at the commencement of this Act.

Prohibition of employment of children under 12.

This is new. The former age limit was "eleven years."
See definition of "child" in sect. 156.

63.—(1) In a factory a young person under the age of sixteen years or a child must not be employed for more than seven, or if the certifying surgeon for the district resides more than three miles from the factory thirteen, work days, unless the occupier of the factory has obtained a certificate, in the prescribed form, of the fitness of the young person or child for employment in that factory.

Certificates of fitness for employment of young persons under 16 and children in factories.

(2) When a child becomes a young person a fresh certificate of fitness must be obtained.

(3) The occupier shall, when required, produce to an inspector at the factory in which a young person or child is employed the certificate of fitness of that young person or child for employment.

As to certificates in "workshops," see sect. 66; and in "domestic" factories, see sect. 111 (3).

64. With respect to a certificate of fitness for employment for the purposes of this Act, the following provisions shall have effect:—

Regulations as to grant of certificate of fitness.

(1) The certificate shall be granted by the certifying surgeon for the district.

(2) The certificate must not be granted except upon personal examination of the person named therein.

(3) A certifying surgeon shall not examine a young person or child for the purpose of the certificate or sign the certificate elsewhere than at the factory where the young person or child is or is about to be employed, unless the number of young persons and children employed in that factory is less than five, or unless for some special reason allowed in writing by an inspector.

(4) The certificate must be to the effect that the certifying surgeon is satisfied, by the production of a certificate of birth or other sufficient

evidence, that the person named in the certificate is of the age therein specified, and has been personally examined by him and is not incapacitated by disease or bodily infirmity for working daily for the time allowed by law in the factory named in the certificate.

- (5) The certificate may be qualified by conditions as to the work on which a child or young person is fit to be employed, and if it is so qualified the occupier shall not employ the young person or child otherwise than in accordance with the conditions.
- (6) A certifying surgeon shall have the same powers as an inspector for the purpose of examining any process in which a child or young person presented to him for the grant of a certificate is proposed to be employed.
- (7) All factories in the occupation of the same occupier and in the district of the same certifying surgeon, or any of them, may be named in the certificate, if the surgeon is of opinion that he can truly give the certificate for employment therein.
- (8) The certificate of birth (which may be produced to a certifying surgeon) shall either be a certified copy of the entry in the register of births, kept in pursuance of the Acts relating to the registration of births, of the birth of the young person or child (whether that copy is obtained in pursuance of the Elementary Education Act, 1876, or otherwise), or be a certificate from a local authority within the meaning of the Elementary Education Act, 1876, to the effect that it appears from the returns transmitted to that authority in pursuance of the said Act by the registrar of births and deaths that the child was born at the date named in the certificate.
- (9) Where the certificate is to the effect that the certifying surgeon has been satisfied of the age of a young person or child by evidence other than the production of a certificate of birth, an inspector may, by notice in writing, annul the surgeon's certificate if he has reasonable cause to believe that the real age of the young person or child named in it is less than that mentioned in the certificate, and thereupon that certificate shall be of no avail for the purposes of this Act.
- (10) Where a certifying surgeon refuses to grant a certificate for any person examined by him, he shall when required give in writing and sign the reasons for his refusal.

Sub-sects. (5) and (6) are new.

Sub-sect (1). See sect. 123.

As to "domestic" factories, see sect. 111 (3).

As to proof of age, see sects. 134 and 147 (2).

Power to obtain certificates of fitness for employment in workshops.

65. In order to enable occupiers of workshops to better secure the observance of this Act, and prevent the employment in their workshops of young persons under the age of sixteen years and children who are unfitted for that employment, an occupier of a workshop may obtain, if he thinks fit, from the certifying surgeon for the district, certificates of the fitness of young persons under the age of sixteen years and children for employment in his workshop, in like manner as if that workshop were a factory, and the certifying surgeon shall examine the young persons and children, and grant certificates accordingly.

66.—(1) Where it appears to the Secretary of State that by reason of special circumstances affecting any class of workshops it is expedient for protecting the health of the young persons under the age of sixteen years, and of the children employed therein, to extend thereto the prohibition in this section mentioned, he may, by Special Order, extend to that class of workshops the prohibition in this Act of the employment of young persons under the age of sixteen years and children without a certificate of the fitness of the young person or child for employment, and thereupon the provisions of this Act with respect to certificates of fitness for employment shall apply to the class of workshops named in the order in like manner as if they were factories.

Power to require certificates of fitness for employment in certain workshops.

(2) If the prohibition is proved to the satisfaction of the Secretary of State to be no longer necessary for the protection of the health of the young persons under the age of sixteen years and the children employed in any class of workshops to which it has been extended under this section, he may, by Special Order, rescind the order of extension, without prejudice to the subsequent making of another order.

See order of Aug. 31, 1906 (St. R. & O. 1906, p. 177).

67. Where an inspector is of opinion that a young person under the age of sixteen years or a child is by disease or bodily infirmity incapacitated for working daily for the time allowed by law in the factory or workshop in which he is employed, he may serve written notice thereof on the occupier of the factory or workshop, requiring that the employment of that young person or child be discontinued from the period named therein, not being less than one nor more than seven days after the service of the notice, and the occupier shall not continue after the period named in the notice to employ that young person or child (notwithstanding that a certificate of fitness has been previously obtained for the young person or child), unless the certifying surgeon for the district has, after the service of the notice, personally examined the young person or child, and has certified that the young person or child is not so incapacitated as aforesaid.

Power of inspector to require surgical certificate of capacity for work.

PART III.

EDUCATION OF CHILDREN.

68.—(1) The parent (z) of a child (z) employed in a factory or workshop shall cause that child to attend some recognised efficient school (a) (which school may be selected by the parent), as follows:—

Attendance at school of children employed in factory or workshop.

- (a) The child, when employed in a morning or afternoon set, must in every week, during any part of which he is so employed, be caused to attend on each work day for at least one attendance; and
- (b) The child, when employed on the alternate day system, must on each work day preceding each day of employment be caused to attend for at least two attendances;
- (c) An attendance for the purposes of this section shall be an attendance as defined for the time being by the Secretary of State with the consent of the Board of Education, and be between the hours of eight in the morning and six in the evening:

(z) Defined in sect. 156 (1).

(a) Defined in sect. 72.

Provided as follows:—

- (i) A child shall not be required by this Act to attend school on Saturday or on any holiday or half holiday allowed under this Act in the factory or workshop in which the child is employed :
- (ii) The non-attendance of a child shall be excused on every day on which he is certified by the teacher of the school to have been prevented from attending by sickness or other unavoidable cause, and when the school is closed during the ordinary holidays or for any other temporary cause :
- (iii) Where there is not within the distance of two miles, measured according to the nearest road, from the residence of the child, a recognised efficient school which the child can attend, attendance at a school temporarily approved in writing by an inspector, although not a recognised efficient school, shall for the purposes of this Act be deemed attendance at a recognised efficient school until such recognised efficient school as aforesaid is established, and with a view to such establishment the inspector shall immediately report to the Board of Education every case of the approval of a school by him under this section.

(2) A child who has not in any week attended school for all the attendances required by this section must not be employed in the following week until he has attended school for the deficient number of attendances.

(3) The Board of Education shall, by the publication of lists or of notices or otherwise as they think expedient, provide for giving to all persons interested information of the schools in each school district which are recognised efficient schools.

Sub-sect. (1) (c). “Attendance” is constituted by secular instruction for two hours : see orders (two) of Dec. 24, 1878, for England and Wales (St. R. & O. Rev. 1904, Vol. IV., Factory and Workshop, p. 32) ; for Scotland (*ibid.* p. 35) ; and order of Feb. 19, 1903 (*ibid.* p. 36), for Ireland.

Employment of children under the age of twelve is prohibited by sect. 62 : *vide supra*.

See sect. 4 of the Elementary Education Act, 1880, as to employment of children ; also sects. 6 and 7 of the Elementary Education Act, 1900, under which sections the bye-laws, if any, as to the standard necessary for any exemption from school-attendance must be observed. As to the enforcement of bye-laws, see sects. 7 and 23 of the Elementary Education Act, 1876.

A child of twelve had satisfied the conditions of partial exemption from attendance at school under sect. 1 of 62 & 63 Vict. c. 13 ; the bye-laws of the Education Authority did not provide for partial exemption in such a case : *Held*, that having regard to the provisions of sect. 68 of this Act, she might lawfully be employed as a “half-timer” in a factory : *Stevenson v. Craig*, [1906] 2 K. B. 298.

Obtaining of
school
attendance
certificate by
occupier.

69.—(1) The occupier of a factory or workshop in which a child is employed shall on Monday in every week (after the first week in which the child began to work therein), or on some other day appointed for that purpose by an inspector, obtain from the teacher of the recognised efficient school attended by a child a certificate (according to the prescribed form and directions) respecting the attendance of the child at school in accordance with this Act.

(2) If a child is employed without such certificate being obtained as is required by this section, the child shall be deemed to be employed contrary to the provisions of this Act.

(3) The occupier shall keep every such certificate for two months after the date thereof, if the child so long continues to be employed in his factory or workshop, and shall produce the same to an inspector when required during that period.

For penalties see sect. 137, *infra*.

70. The persons who manage a recognised efficient school attended by a child employed in a factory or workshop, or some person authorised by them may (if fees for children may be charged in that school) apply in writing to the occupier of the factory or workshop to pay a weekly sum specified in the application, not exceeding threepence and not exceeding one-twelfth part of the wages of the child, and after that application the occupier, so long as he employs the child, shall be liable to pay to the applicants, while the child attends their school, that weekly sum, and the sum may be recovered as a debt, and the occupier may deduct the sum so paid by him from the wages payable for the services of the child.

Payment by occupier of sum for schooling.

This section has ceased to be important since the abolition of school fees by the Elementary Education Act, 1891.

71.—(1) When a child of the age of thirteen years has obtained from a person authorised by the Board of Education a certificate of having attained such standard of proficiency in reading, writing, and arithmetic, or such standard of previous due attendance at a certified efficient school as is mentioned in this section, that child shall be deemed to be a young person for the purposes of this Act.

Employment as young person of child of 13 on obtaining educational certificate.

(2) The standards of proficiency and due attendance for the purposes of this section shall be such as may be from time to time fixed for the purposes of this Act by the Secretary of State, with the consent of the Board of Education, and the standards so fixed shall be published in the London Gazette, and shall not have effect until the expiration of at least six months after such publication.

(3) Attendance at a certified day industrial school shall be deemed for the purposes of this section to be attendance at a certified efficient school.

Sub-sect. (2). See the following orders:—Of Dec. 19, 1900 (St. R. & O. Rev. 1904, Vol. IV., Factory and Workshop, p. 33) (England); of Feb. 19, 1903 (*ibid.* p. 36) (Ireland), repealing the order of March 4, 1879.

As to Scotland, see sect. 159 (7), *infra*.

The bye-laws of an Education Authority exempted a child between twelve and fourteen years of age from attendance at school if he had received a certificate that he had reached the sixth standard, but did not exempt a child who had obtained a certificate for due attendance at school under this section: *Held*, that a child between twelve and fourteen who held only the latter certificate was not lawfully employed full time in a factory: *Stevenson v. Goldstraw*, [1906] 2 K. B. 298.

72.—(1) In this Act—

The expression “certified efficient school” means a public elementary school within the meaning of the Elementary Education Acts, 1870 to 1900, and any workhouse school in England certified to be efficient by the Local Government Board, and any elementary school which is not conducted for private profit and is open at all reasonable times to the inspection of His Majesty’s inspectors of schools, and requires the like attendance from its scholars as is required in a public elementary school, and keeps such registers of those attendances as are for the

Definitions of “certified efficient school,” and “recognised efficient school.”

time being required by the Board of Education, and is certified by the Board to be an efficient school; and

The expression "recognised efficient school" means a certified efficient school, and any school which the Board of Education have not refused to take into consideration under the Elementary Education Act, 1870, as a school giving efficient elementary education to and suitable for the children of a school district, and which is recognised for the time being by an inspector under this Act as giving efficient elementary education.

(2) An inspector shall immediately report to the Board of Education every school recognised by him as giving efficient elementary education.

PART IV.

DAINGEROUS AND UNHEALTHY INDUSTRIES.

(i) *Special Provisions.*

Notification of certain diseases contracted in factory or workshop.

73.—(1) Every medical practitioner attending on or called in to visit a patient whom he believes to be suffering from lead, phosphorus, arsenical or mercurial poisoning, or anthrax, contracted in any factory or workshop, shall (unless the notice required by this sub-section has been previously sent) send to the Chief Inspector of Factories at the Home Office, London, a notice stating the name and full postal address of the patient and the disease from which, in the opinion of the medical practitioner, the patient is suffering, and shall be entitled in respect of every notice sent in pursuance of this section to a fee of two shillings and sixpence, to be paid as part of the expenses incurred by the Secretary of State in the execution of this Act.

(2) If any medical practitioner, when required by this section to send a notice, fails forthwith to send the same, he shall be liable to a fine not exceeding forty shillings.

(3) Written notice of every case of lead, phosphorus, or arsenical or mercurial poisoning, or anthrax, occurring in a factory or workshop, shall forthwith be sent to the inspector and to the certifying surgeon for the district; and the provisions of this Act with respect to accidents shall apply to any such case in like manner as to any such accident as is mentioned in those provisions.

(4) The Secretary of State may, by Special Order, apply the provisions of this section to any other disease occurring in a factory or workshop, and thereupon this section and the provisions referred to therein shall apply accordingly.

Sub-sect. (3). "Accidents": see sects. 19—22, *supra*.

Provision as to ventilation by fan in certain factories and workshops.

74. If in a factory or workshop where grinding, glazing, or polishing on a wheel, or any process is carried on by which dust, or any gas, vapour, or other impurity, is generated and inhaled by the workers to an injurious extent, it appears to an inspector that such inhalation could be to a great extent prevented by the use of a fan or other mechanical means, the inspector may direct that a fan or other mechanical means of a proper construction for preventing such inhalation be provided within a reasonable

time; and if the same is not provided, maintained, and used, the factory or workshop shall be deemed not to be kept in conformity with this Act.

Actual injury need not be proved; it is enough that in the long run injury will result: *Hoare v. Ritchie*, [1901] 1 Q. B. 434.

75.—(1) In every factory or workshop where lead, arsenic, or any other poisonous substance is used, suitable washing conveniences must be provided for the use of the persons employed in any department where such substances are used. Lavatories and meals in certain dangerous trades.

(2) In any factory or workshop where lead, arsenic, or other poisonous substance is so used as to give rise to dust or fumes, a person shall not be allowed to take a meal, or to remain during the times allowed to him for meals, in any room in which any such substance is used, and suitable provision shall be made for enabling the persons employed in such rooms to take their meals elsewhere in the factory or workshop.

(3) A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

Sub-sect. (2) is new.

76.—(1) A woman, young person, or child must not be employed in any part of a factory in which wet-spinning is carried on, unless sufficient means are employed and continued for protecting the workers from being wetted, and, where hot water is used, for preventing the escape of steam into the room occupied by the workers. Restrictions as to employment in wet-spinning.

(2) A factory in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

77.—(1) In the part of a factory or workshop in which there is carried on— Prohibition of employment of young persons and children in certain factories and workshops.

(a) the process of silvering of mirrors by the mercurial process; or

(b) the process of making white lead,

a young person or child must not be employed.

(2) In the part of a factory in which the process of melting or annealing glass is carried on a female young person or a child must not be employed.

(3) In a factory or workshop in which there is carried on—

(a) the making or finishing of bricks or tiles not being ornamental tiles; or

(b) the making or finishing of salt,

a girl under the age of sixteen years must not be employed.

(4) In the part of a factory or workshop in which there is carried on—

(a) any dry grinding in the metal trade; or

(b) the dipping of lucifer matches,

a child must not be employed.

(5) Notice of a prohibition contained in this section must be affixed in the factory or workshop to which it applies.

Sub-sect. (3) (a). "Finishing of bricks": see *Squire v. Stanley* (1901), 84 L. T. (N. S.) 535.

Prohibition of taking meals in certain parts of factories and workshops.

78.—(1) A woman, young person, or child must not be allowed to take a meal or to remain during the times allowed for meals in the following factories or workshops, or parts of factories or workshops; that is to say,—

- (a) in the case of glass works, in any part in which the materials are mixed; and
- (b) in the case of glass works where flint glass is made, in any part in which the work of grinding, cutting, or polishing is carried on; and
- (c) in the case of lucifer-match works, in any part in which any manufacturing process or handicraft (except that of cutting the wood) is usually carried on; and
- (d) in the case of earthenware works, in any part known or used as dippers house, dippers drying room, or china scouring room.

(2) If a woman, young person, or child is allowed to take a meal or to remain during the times allowed for meals in a factory or workshop or part thereof in contravention of this section, the woman, young person, or child shall be deemed to be employed contrary to the provisions of this Act.

(3) Notice of the prohibition in this section shall be affixed in every factory or workshop to which it applies.

(4) Where it appears to the Secretary of State that by reason of the nature of the process in any class of factories or workshops or parts thereof not named in this section the taking of meals therein is specially injurious to health, he may, if he thinks fit, by Special Order, extend the prohibition in this section to the class of factories or workshops or parts thereof.

(5) If the prohibition in this section is proved to the satisfaction of the Secretary of State to be no longer necessary for the protection of the health of women, young persons, and children in any class of factories or workshops or parts thereof to which it has been so extended, he may, by Special Order, rescind the order of extension, without prejudice to the subsequent making of another order.

Sub-sect. (4). See order of March 23, 1898 (St. R. & O. Rev. 1904, Vol. IV., Factory and Workshop, p. 43; L. G., March 25, 1898).

(ii) *Regulations for Dangerous Trades.*

N.B.—The portions of the Acts of 1891 and 1895 dealing with special rules in dangerous trades are still in force: *vide* sect. 161, and Sched. 7, Part II., *infra*.

By sect. 156, sub-sect. (4):—"References in this Act to regulations made under this Act shall be construed as including references to special rules established or requirements made under any previous Act."

By sect. 161, sub-sect. (2):—"All orders and all special rules and requirements made or having effect under any enactment hereby repealed shall continue to have effect as if they had been made under this Act; and nothing in this Act shall be construed as altering the mode of making such special rules or requirements whilst the power to make them continues in force."

Sects. 79–85, and 86, sub-sects. (1) and (6), are new.

Power to make regulations for safety of persons employed in

79. Where the Secretary of State is satisfied that any manufacture, machinery, plant, process, or description of manual labour, used in factories or workshops, is dangerous or injurious to health or dangerous to life or limb, either generally or in the case of women, children, or any other class of persons, he may certify that manufacture, machinery, plant, process, or

description of manual labour, to be dangerous; and thereupon the Secretary of State may, subject to the provisions of this Act, make such regulations as appear to him to be reasonably practicable, and to meet the necessity of the case.

See as to certificates under the Factory and Workshop Act, 1891, the note on sect. 86, *infra*.

See Regulations as to "Manufacture of felt hats" (St. R. & O. Rev. 1901, Vol. IV., Factory and Workshop, p. 60; L. G., Aug. 19, 1902); as to "File-cutting by hand" (*ibid.* p. 61; L. G., June 23, 1903); as to "Manufacture of electric accumulators" (*ibid.* p. 63; L. G., Nov. 21, 1903); and as to "Loading, unloading, &c. at any dock, wharf, or quay, and loading, unloading, and coaling any ship in a dock, harbour, or canal" (St. R. & O. 1904, p. 146); "Spinning by self-acting mules" (St. R. & O. 1905, p. 88); "Sorting, &c. goat-hair and camel-hair" (*ibid.* p. 90); "Spinning and weaving flax and tow" (St. R. & O. 1906, p. 178); "Use of locomotives, &c." (*ibid.* p. 181); "Manufacture of paints with red lead" (St. R. & O. 1907, p. 139); "Heading of yarn, &c." (*ibid.* p. 142); "Manufacture of nitro-benzene, and certain explosives" (*ibid.* p. 148); "Use of horse-hair from China, Siberia and Russia" (*ibid.* p. 152); "Spinning and weaving hemp or jute, &c." (*ibid.* p. 145).

80.—(1) Before the Secretary of State makes any regulations under this Act, he shall publish, in such manner as he may think best adapted for informing persons affected, notice of the proposal to make the regulations, and of the place where copies of the draft regulations may be obtained, and of the time (which shall be not less than twenty-one days) within which any objection made with respect to the draft regulations by or on behalf of persons affected must be sent to the Secretary of State.

Procedure
for making
regulations.

(2) Every objection must be in writing and state—

- (a) the draft regulations or portions of draft regulations objected to;
- (b) the specific grounds of objection; and
- (c) the omissions, additions, or modifications asked for.

(3) The Secretary of State shall consider any objection made by or on behalf of any persons appearing to him to be affected which is sent to him within the required time, and he may, if he thinks fit, amend the draft regulations, and shall then cause the amended draft to be dealt with in like manner as an original draft.

(4) Where the Secretary of State does not amend or withdraw any draft regulations to which any objection has been made, then (unless the objection either is withdrawn or appears to him to be frivolous) he shall, before making the regulations, direct an inquiry to be held in the manner hereinafter provided.

81.—(1) The Secretary of State may appoint a competent person to hold an inquiry with regard to any draft regulations, and to report to him thereon.

(2) The inquiry shall be held in public, and the chief inspector and any objector and any other person who, in the opinion of the person holding the inquiry, is affected by the draft regulations, may appear at the inquiry either in person or by counsel, solicitor, or agent.

(3) The witnesses on the inquiry may, if the person holding it thinks fit, be examined on oath.

(4) Subject as aforesaid, the inquiry and all proceedings preliminary and incidental thereto shall be conducted in accordance with rules made by the Secretary of State.

Inquiries.

(5) The fee to be paid to the person holding the inquiry shall be such as the Secretary of State may direct, and shall be deemed to be part of the expenses of the Secretary of State in the execution of this Act.

Sub-sect. (4). See order of February 5, 1903 (St. R. & O. Rev. 1904, Vol. IV., Factory and Workshop, p. 58).

Application
of regulations.

82.—(1) The regulations made under the foregoing provisions of this Act may apply to all the factories and workshops in which the manufacture, machinery, plant, process, or description of manual labour, certified to be dangerous is used (whether existing at the time when the regulations are made or afterwards established) or to any specified class of such factories or workshops. They may provide for the exemption of any specified class of factories or workshops either absolutely or subject to conditions.

(2) The regulations may apply to tenement factories and tenement workshops, and in such case may impose duties on occupiers who do not employ any person, and on owners.

(3) No person shall be precluded by any agreement from doing, or be liable under any agreement to any penalty or forfeiture for doing, such acts as may be necessary in order to comply with the provisions of any regulation made under this Act.

Provisions
which may
be made by
regulations.

83. Regulations made under the foregoing provisions of this Act may, among other things,—

(a) prohibit the employment of, or modify or limit the period of employment of, all persons or any class of persons in any manufacture, machinery, plant, process, or description of manual labour certified to be dangerous; and

(b) prohibit, limit, or control the use of any material or process; and

(c) modify or extend any special regulations for any class of factories or workshops contained in this Act.

Regulations
to be laid
before
Parliament.

84. Regulations made under the foregoing provisions of this Act shall be laid as soon as possible before both Houses of Parliament, and if either House within the next forty days after the regulations have been laid before that House, resolve that all or any of the regulations ought to be annulled, the regulations shall, after the date of the resolution, be of no effect, without prejudice to the validity of anything done in the meantime thereunder, or to the making of any new regulations. If one or more of a set of regulations are annulled, the Secretary of State may, if he thinks fit, withdraw the whole set.

Breach of
regulations.

85.—(1) If any occupier, owner, or manager, who is bound to observe any regulation under this Act, acts in contravention of or fails to comply with the regulation, he shall be liable for each offence to a fine not exceeding ten pounds, and, in the case of a continuing offence, to a fine not exceeding two pounds for every day during which the offence continues after conviction therefor.

(2) If any person other than an occupier, owner, or manager, who is bound to observe any regulation under this Act, acts in contravention of, or fails to comply with, the regulation, he shall be liable for each offence to a fine not exceeding two pounds; and the occupier of the factory or workshop shall also be liable to a fine not exceeding ten pounds, unless he proves that he has taken all reasonable means by publishing, and to the best of his

power enforcing, the regulations to prevent the contravention or non-compliance.

86.—(1) Notice of any regulations having been made under the foregoing provisions of this Act, and of the place where copies of them can be purchased, shall be published in the London, Edinburgh, and Dublin Gazettes. Publication of regulations.

(2) Printed copies of all regulations for the time being in force under this Act in any factory or workshop shall be kept posted up in legible characters in conspicuous places in the factory or workshop where they may be conveniently read by the persons employed. In a factory or workshop in Wales or Monmouthshire the regulations shall be posted up in the Welsh language also.

(3) A printed copy of all such regulations shall be given by the occupier to any person affected thereby on his or her application.

(4) If the occupier of any factory or workshop fails to comply with any provision of this section as to posting up or giving copies, he shall be liable to a fine not exceeding ten pounds.

(5) Every person who pulls down, injures, or defaces any regulations posted up in pursuance of this Act, or any notice posted up in pursuance of the regulations, shall be liable to a fine not exceeding five pounds.

(6) Regulations for the time being in force under this Act shall be judicially noticed.

Seets. 8, 9, 10 and 12, and the First Schedule of the Act of 1891, and seets. 12, 24, sub-sect. (3), and 28 of the Act of 1895 are still in force: *vide* note prefixed to sect. 79, *supra*. Certificates that processes are dangerous and injurious to health, under sect. 8, sub-sect (1), of the Act of 1891, have been issued by the Secretary of State in the following cases:—

Manufacture of white lead; manufacture of paints and extraction of arsenic; enamelling of iron plates (St. R. & O. Rev. 1904, Vol. IV., Factory and Workshop, p. 44; L. G., May 13, 1892).

Manufacture of lucifer matches (*ibid.* p. 15; L. G., June 7, 1892).

Manufacture of earthenware, and of certain explosives; chemical works; quarries (*ibid.* p. 46; L. G., Dec. 27, 1892).

Manufacture of red, orange, or yellow lead; lead smelting; tinning and enamelling iron hollow-ware (*ibid.* p. 47; L. G., Jan. 5, 1894).

Flax mills and linen factories (*ibid.* p. 48; *ibid.*).

Tinning and enamelling metal hollow-ware and cooking utensils (*ibid.* L. G., June 22, 1894).

Where yellow chromate of lead is used or where goods dyed with it are treated in any way (*ibid.* p. 49; L. G., April 19, 1895).

Mixing and casting of brass, gun metal, bell metal, white metal, delta metal, phosphor bronze, and manilla mixture (*ibid.* p. 50; L. G., Jan. 10, 1896).

Sorting wool, goat or camel hair (*ibid.* p. 51; L. G., Aug. 7, 1896).

Bottling aerated water (*ibid.* p. 52).

Vulcanizing indiarubber (*ibid.* p. 53; L. G., Dec. 4, 1896).

Sorting foreign hides and skins (*ibid.* p. 53; L. G., April 5, 1898).

Manufacture and decoration of earthenware and china (*ibid.* p. 54; L. G., May 10, 1898).

Dusting of colours on adhesive surfaces in the preceding processes (*ibid.* p. 55; L. G., Aug. 12, 1898).

Glazing bricks with use of lead (*ibid.* p. 56; L. G., Dec. 20, 1898).

Sorting, willeying, washing, combing, and carding wool, and goat and camel hair (*ibid.*; L. G., Dec. 1, 1899).

N.B. —The special regulations, made by chief inspectors in these cases, are collected in Mr. Evans Austin's *Law Relating to Factories and Workshops* (2nd ed., 1901, at p. 342).

PART V.

SPECIAL MODIFICATIONS AND EXTENSIONS.

(i) *Tenement Factories.*

Duties of owner of tenement factory.

87.—(1) The owner (whether or not he is one of the occupiers) of a tenement factory (*b*) shall, instead of the occupier, be liable for the observance, and punishable for non-observance, of the following provisions of this Act, namely, the provisions with respect to—

- (i) the cleanliness, freedom from effluvia, overcrowding and ventilation of factories, contained in section one of this Act, including, so far as they relate to any engine-house, passage, or staircase, or to any room which is let to more than one tenant, the provisions with respect to limewashing and washing of the interior of a factory;
- (ii) the fencing of machinery, and penal compensation for neglect to fence machinery in a factory, except so far as relates to such parts of the machinery as are supplied by the occupier;
- (iii) the notices to be affixed in a factory with respect to the period of employment, times for meals, and system of employment of children;
- (iv) the prevention of the inhalation of dust, gas, vapour, or other impurity, so far as that provision requires the supply of pipes or other contrivances necessary for working the fan or other means for that purpose; and
- (v) the affixing of an abstract and notices in a factory.

Provided that any occupier may affix in his own tenement the notice with respect to the period of employment, times for meals, and system of employment of children, and thereupon that notice shall, with respect to persons employed by that occupier, have effect in substitution for the corresponding notice affixed by the owner.

(2) The provisions of this Act with respect to the power to make orders in the case of dangerous premises shall apply in the case of a tenement factory as if the owner were substituted for the occupier.

(3) In the case of any tenement factory or class of tenement factories used wholly or partly for the weaving of cotton cloth, the owner shall, if the Secretary of State by order so directs, be substituted for the occupier for the purpose of the requirements of section seven and section ninety-four of this Act or of any order of the Secretary of State with respect to ventilation.

(4) Where, by or under this section, the owner of a tenement factory is substituted for the occupier with respect to any provisions of this Act, any summons, notice, or proceeding, which for the purpose of any of those provisions is by this Act required or authorised to be served on or taken in relation to the occupier, is hereby required or authorised (as the case may be) to be served on or taken in relation to the owner.

The provisos to sub-sect. (1), and sub-sect. (3), are new.

(*b*) Defined in sect. 149 (1).

88.—(1) Where grinding is carried on in a tenement factory, the owner of the factory shall be responsible for the observance of the regulations set forth in the Third Schedule to this Act. Regulations as to grinding of cutlery in tenement factory.

(2) In every such tenement factory it shall be the duty of the owner and of the occupier of the factory respectively to see that such part of the horsing chains and of the hooks to which the chains are attached as are supplied by them respectively are kept in efficient condition.

(3) In every tenement factory where grinding of cutlery is carried on, the owner of the factory shall provide that there shall at all times be instantaneous communication between each of the rooms in which the work is carried on and both the engine-room and the boiler-house.

(4) A tenement factory in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act, but for the purposes of any proceeding in respect of a provision for the observance of which the owner of the factory is responsible, that owner shall be substituted for the occupier of the factory.

(5) This section shall not apply to a textile factory.

Sub-sect. (1). See note on Third Schedule to this Act.

89. A certificate of the fitness of any young person or child for employment in a tenement factory shall be valid for his similar employment in any part of the same tenement factory. Certificate of fitness in tenement factory.

(ii) *Cotton Cloth and other Humid Factories.*

90. In every room, shed, or workshop, or part thereof, in which the weaving of cotton cloth is carried on (in this Act referred to as a "cotton cloth factory"), the following provisions shall have effect:— Temperature and humidity.

(1) The amount of moisture in the atmosphere must not at any time be in excess of such amount as is represented by the number of grains of moisture per cubic foot of air shown in column I. of the table in the Fourth Schedule to this Act opposite to such figure in column II. as represents the temperature existing in the cotton cloth factory at that time :

Provided that the temperature shall not at any time be raised by any artificial means whatsoever (except by gas used for lighting purposes only) above seventy degrees, except in so far as may be necessary in the process of giving humidity to the atmosphere.

(2) The fact that one of the wet-bulb thermometers in the factory gives a higher reading than the figure shown in column III. of the said table opposite to such figure in column II. as represents the temperature existing in the factory, shall be evidence that the amount of moisture in the atmosphere exceeds the limit prescribed by this section.

The provisions of the repealed Cotton Cloth Factories Acts, together with the Secretary of State's Orders made under them, are embodied in this and the six following sections.

91. The Secretary of State may by order repeal or vary the table in the Fourth Schedule to this Act, and substitute any new or amended table therefor : Power to alter table of humidity.

Provided as follows:—

- (a) The varied or substituted table shall be laid in a complete form before both Houses of Parliament if Parliament is sitting, or if not, then within three weeks after the beginning of the next ensuing session of Parliament; and if the table is disapproved by either House of Parliament within forty days after having been so laid before Parliament, the table shall be void and of no effect;
- (b) The table shall not come into operation until it has been laid before Parliament for forty days; but after the expiration of those forty days, if the table has not been disapproved of as aforesaid, the Secretary of State shall cause a copy thereof to be published in the London Gazette, and to be given to every occupier of a cotton cloth factory who, in pursuance of this Act, has given notice of humidity of the atmosphere being artificially produced in that factory, and after the expiration of fourteen days from the first publication thereof in the London Gazette, the varied or substituted table shall be deemed to be the table in the Fourth Schedule to this Act.

See order of Dec. 24, 1898 (St. R. & O. Rev. 1904, Vol. IV., Factory and Workshop, p. 68).

Employment
of thermo-
meters.

92.—(1) In every cotton cloth factory, for the purpose of recording the humidity of the atmosphere and the temperature there must be provided, maintained, and kept in correct working order two sets of standardised wet and dry bulb thermometers.

(2) The following regulations shall be observed with reference to the employment of such thermometers:—

- (a) One set of thermometers is to be fixed in the centre and one at the side of the factory, or in such other position as is directed or sanctioned by an inspector, so as to be plainly visible to the workers;
- (b) The occupier or manager or person for the time being in charge of the factory shall read the thermometers thrice in the day, namely, between seven and eight o'clock in the forenoon, between ten and eleven o'clock in the forenoon, and between three and four o'clock in the afternoon, on every day on which any workers are employed in the factory, and shall record the readings of each thermometer at each of those times on a form provided for the purpose for each set of thermometers in accordance with the Form of Record and the regulations contained in the Fourth Schedule to this Act;
- (c) The form in which the readings of each thermometer are to be recorded must be kept hung up near the thermometers, and after being duly filled up, must be forwarded at the end of each month to the inspector of the district, and a copy must be kept at the factory for reference;
- (d) There must be kept hanging up in a frame, and properly glazed, in a conspicuous position and near to each set of thermometers, a copy of the table set out in the Fourth Schedule to this Act;
- (e) Each form shall be *prima facie* evidence of the humidity of the atmosphere and temperature in the factory in which the form was hung up.

Sub-sect. (2) (b)—(c) do not apply to cotton-spinning mills; sect. 96 (d), *infra*.

Notices and
inspections
where

93.—(1) The occupier of every cotton cloth factory in which humidity of the atmosphere is produced by any artificial means whatsoever (except by gas used for lighting purposes only) shall, at or before the time at which

such artificial production of humidity is commenced, give notice thereof in writing to the chief inspector of factories.

humidity is artificially produced.

(2) Every factory in respect of which any such notice has been given shall be visited by an inspector once at least in every three months. The inspector shall examine into the temperature, humidity of the atmosphere, ventilation, and quantity of fresh air in the factory, and shall report to the chief inspector of factories in the prescribed form.

(3) If at any time the occupier of any factory in respect of which any such notice has been given ceases to produce humidity by artificial means, he may give notice in writing of such cessation and from the date of that notice, and so long as humidity is not artificially produced in the factory, the provisions of this section shall not apply to that factory.

94. In every cotton cloth factory the following regulations for the protection of health shall have effect, viz. :—

Regulations for the protection of health.

- (1) The water used for the purpose of producing humidity shall either be taken from a public supply of drinking water or other source of pure water, or shall be effectively purified to the satisfaction of the inspector before being introduced in the form of steam into the factory, and all ducts for the introduction of humidified air shall be kept clean.
- (2) The pipes used for the introduction of steam into a cotton cloth factory in which the temperature is seventy degrees Fahrenheit or over shall, so far as they are within the shed, be as small both in diameter and length as is reasonably practicable, and shall be effectively covered with non-conducting material to the satisfaction of the inspector, so as to minimise the amount of heat thrown off by them into the shed.
- (3) In the case of a cotton cloth factory in which humidity of the atmosphere is produced by any artificial means whatsoever (except by gas used for lighting purposes only), the arrangements for ventilation shall be such that during working hours in no part of the cotton cloth factory shall the proportion of carbonic acid (carbon dioxide) in the air be greater than nine volumes of carbonic acid to every ten thousand volumes of air.
- (4) Unless some other method certified by the inspector to be equally satisfactory is adopted, the outside of the roof of every cotton cloth factory shall be whitewashed every year before the thirty-first day of May, and such whitewash shall be effectively maintained until the thirty-first day of August.
- (5) In every cotton cloth factory erected after the second day of February one thousand eight hundred and ninety-eight a sufficient and suitable cloak room, or cloak rooms, shall be provided for the use of all the persons employed therein, and shall be ventilated and kept at a suitable temperature.

As to application of this section, see sect. 96 (c), *infra*.

95. If in the case of any cotton cloth factory there is a contravention of or non-compliance with any of the foregoing provisions with regard to cotton cloth factories, the inspector shall give notice in writing to the occupier of the factory of the acts or omissions constituting the contraven-

Penalties for non-compliance.

tion or non-compliance, and if those acts or omissions, or any of them, are continued or not remedied, or are repeated within twelve months after the notice has been given, the occupier of the factory shall be liable, for the first offence to a fine not less than five pounds and not exceeding ten pounds, and for every subsequent offence to a fine not less than ten pounds and not exceeding twenty pounds.

This section is absolute as to the amount of the fine to be imposed, and excludes the discretion of the Court under sect. 4 of the Summary Jurisdiction Act, 1879, to mitigate the amount of a fine upon conviction for a first offence: *Osborn v. Wood Bros.*, [1897] 1 Q. B. 197.

Application of foregoing provisions to other humid factories.

96. The foregoing provisions of this Act with respect to cotton cloth factories shall apply to every textile factory in which atmospheric humidity is artificially produced by steaming or other mechanical appliances, and in which regulations under Part IV. of this Act with respect to humidity are not for the time being in force, but subject to the following qualifications, namely:—

- (a) The Secretary of State may by special order modify the provisions of the Fourth Schedule to this Act with respect to the maximum limits of humidity;
- (b) The reading of the thermometer between seven and eight o'clock in the forenoon shall not be required; and
- (c) Section ninety-four respecting regulations for the protection of health in cotton cloth factories shall not apply; and
- (d) The regulations in section ninety-two distinguished as (b), (c), (d), and (e) which are required to be observed with reference to the employment of thermometers shall not apply to cotton spinning mills.

(iii) *Bakehouses.*

Sanitary regulations for bakehouses.

97.—(1) It shall not be lawful to let or suffer to be occupied or to occupy any room or place as a bakehouse (c), unless the following regulations are complied with:—

- (a) A watercloset, earthcloset, privy, or ashpit must not be within or communicate directly with the bakehouse;
- (b) Every cistern for supplying water to the bakehouse must be separate and distinct from any cistern for supplying water to a watercloset;
- (c) A drain or pipe for carrying off faecal or sewage matter must not have an opening within the bakehouse.

(2) If any person lets or suffers to be occupied or occupies any room or place as a bakehouse in contravention of this section he shall be liable to a fine not exceeding forty shillings, and to a further fine not exceeding five shillings for every day during which any room or place is so occupied after a conviction under this section.

Penalty for bakehouse being unfit on sanitary grounds.

98.—(1) Where a court of summary jurisdiction is satisfied on the prosecution of an inspector or a district council that any room or place used as a bakehouse is in such a state as to be on sanitary grounds unfit for use or

(c) See definition in Sched. 3, Part II. (23); and cf. "retail bakehouse" in sect. 102.

occupation as a bakehouse, the occupier of the bakehouse shall be liable to a fine not exceeding, for the first offence, forty shillings, and for any subsequent offence five pounds.

(2) The court of summary jurisdiction, in addition to or instead of inflicting a fine, may order means to be adopted by the occupier, within the time named in the order, for the purpose of removing the ground of complaint. The court may, on application, enlarge the time so named, but if after the expiration of the time as originally named or enlarged by subsequent order the order is not complied with, the occupier shall be liable to a fine not exceeding one pound for every day that the non-compliance continues.

99.—(1) All the inside walls of the rooms of a bakehouse, and all the ceiling or tops of those rooms (whether those walls, ceilings, or tops are plastered or not), and all the passages and staircases of a bakehouse, must either be painted with oil or varnished or be limewashed, or be partly painted or varnished and partly limewashed; and

Limewashing, painting, and washing of bakehouses.

(a) where the bakehouse is painted with oil or varnished, there must be three coats of paint or varnish, and the paint or varnish must be renewed once at least in every seven years, and must be washed with hot water and soap once at least in every six months; and

(b) where the bakehouse is limewashed, the limewashing must be renewed once at least in every six months.

(2) A bakehouse in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

100.—(1) A place on the same level with a bakehouse, and forming part of the same building, may not be used as a sleeping place, unless it is constructed as follows; that is to say

Provision as to sleeping places near bakehouses.

(a) is effectually separated from the bakehouse by a partition extending from the floor to the ceiling; and

(b) has an external glazed window of at least nine superficial feet in area, of which at the least four and a half superficial feet are made to open for ventilation.

(2) If any person lets or occupies or continues to let or knowingly suffers to be occupied any place contrary to this section he shall be liable to a fine not exceeding, for the first offence, twenty shillings, and for any subsequent offence five pounds.

101.—(1) An underground bakehouse shall not be used as a bakehouse unless it was so used at the passing of this Act.

Prohibition of underground bakehouses.

(2) Subject to the foregoing provision, after the first day of January one thousand nine hundred and four an underground bakehouse shall not be used unless certified by the district council to be suitable for that purpose.

(3) For the purpose of this section an underground bakehouse shall mean a bakehouse, any baking room of which is so situate that the surface of the floor is more than three feet below the surface of the footway of the adjoining street, or of the ground adjoining or nearest to the room. The expression "baking room" means any room used for baking, or for any process incidental thereto.

(4) An underground bakehouse shall not be certified as suitable unless the district council is satisfied that it is suitable as regards construction, light, ventilation, and in all other respects.

54 & 55 Viet.
c. 76.

(5) This section shall have effect as if it were included among the provisions relating to bakehouses which are referred to in section twenty-six of the Public Health (London) Act, 1891.

(6) If any place is used in contravention of this section, it shall be deemed to be a work-shop not kept in conformity with this Act.

(7) In the event of the refusal of a certificate by the district council, the occupier of the bakehouse may, within twenty-one days from the refusal, by complaint apply to a court of summary jurisdiction, and if it appears to the satisfaction of the court that the bakehouse is suitable for use as regards construction, light, ventilation, and in all other respects, the court shall thereupon grant a certificate of suitability of the bakehouse, which shall have effect as if granted by the district council.

(8) Where any place has been let as a bakehouse, and the certificate required by this section cannot be obtained unless structural alterations are made, and the occupier alleges that the whole or part of the expenses of the alterations ought to be borne by the owner, he may by complaint apply to a court of summary jurisdiction, and that court may make such order concerning the expenses or their apportionment as appears to the court to be just and equitable, under the circumstances of the case, regard being had to the terms of any contract between the parties, or in the alternative the court may, at the request of the occupier, determine the lease.

Sub-sects. (2)–(5) and (7) and (8) are new.

Sub-sect. (1). Under a similar provision (sect. 27, sub-sect. (3)) in the Act of 1895 an underground bakehouse was held to have been “so used at the commencement of this Act,” on these facts:—The premises had been fitted up with an underground bakehouse in 1879, and had been occupied and used by a baker to October, 1895, when the tenant left. The owner then repaired the premises, including the oven and underground bakehouse, and advertised them for occupation as “baker’s premises.” The repairs were finished at Christmas, 1895, and the premises were not occupied till February, 1896; the Act came into operation on January 1, 1896: *Schwerzerhof v. Wilkins*, [1898] 1 Q. B. 640.

Sub-sects. (2) and (8). A covenant by the lessee to pay “all . . . impositions and outgoings of every description” includes expenses of structural alterations necessary for the obtaining of the district council’s certificate: *Goldstein v. Hollingsworth*, [1904] 2 K. B. 578.

Sub-sect. (8). In the case of a covenant by the tenant to pay “all outgoings,” the magistrate has no jurisdiction to impose the payment of any of the expenses of structural alteration upon the landlord: *Morris v. Beal*, [1904] 2 K. B. 585.

Quære, whether, in the absence of an obligation to use the premises as a bakehouse, they have been “let as a bakehouse”: *ibid.*

Enforcement
of law as to
retail bake-
houses by
sanitary
authorities.

102. As respects every retail bakehouse, the provisions of this Part of this Act shall be enforced by the district council of the district in which the retail bakehouse is situate, and not by an inspector; and for the purposes of this section the medical officer of health of the district council shall have and may exercise all the powers of entry, inspection, taking legal proceedings and otherwise of an inspector.

In this section the expression “retail bakehouse” means any bakehouse or place, not being a factory, the bread, biscuits, or confectionery baked in which are sold, not wholesale, but by retail, in some shop or place occupied with the bakehouse.

As to the powers of the medical officer, see sect. 119 (1), *infra*.

(iv) *Laundries (ce)*.

103.—(1) In every laundry carried on by way of trade, or for purposes of gain, the following provisions shall apply :—

Application of
Act to
laundries.

- (a) The period of employment, exclusive of meal hours and absence from work, shall not exceed, for women fourteen hours, for young persons twelve hours, and for children ten hours in any consecutive twenty-four hours ; nor a total for women and young persons of sixty hours, and for children of thirty hours, in any one week, in addition to such overtime as may be allowed in the case of women ;
 - (b) A woman, young person, or child must not be employed continuously for more than five hours without an interval of at least half an hour for a meal ;
 - (c) Women, young persons, and children employed in the laundry shall have allowed to them the same holidays as are allowed to women, young persons, and children employed in a factory or workshop under this Act ;
 - (d) So far as regards provisions with respect to health and safety, accidents, education of children, notice of occupation of a factory or workshop, the affixing of abstracts and notices and the matters to be specified in those notices (so far as they apply to laundries), powers of inspectors, fines, and legal proceedings for any failure to comply with the provisions of this section, this Act shall have effect as if every laundry in which steam, water, or other mechanical power is used in aid of the laundry process were a factory, and every other laundry were a workshop, and as if every occupier of a laundry were the occupier of a factory or of a workshop ;
 - (e) The notice to be affixed in the laundry shall specify the period of employment and the times for meals, but the period and times so specified may be varied before the beginning of employment on any day ;
 - (f) The provisions of this Act prohibiting the employment of women within four weeks after childbirth, and of children under the age of twelve years, shall apply to the laundry in like manner as to a factory or workshop.
- (2) Women employed in laundries may work overtime, subject to the following conditions, namely :—
- (a) A woman must not work more than fourteen hours in any day ; and
 - (b) The overtime worked must not exceed two hours in any day ; and
 - (c) Overtime must not be worked on more than three days in any week or more than thirty days in any year ; and
 - (d) The requirements of section sixty of this Act with respect to notices must be observed.
- (3) In the case of every laundry worked by steam, water, or other mechanical power—
- (a) a fan or other means of a proper construction must be provided, maintained, and used for regulating the temperature in every ironing-room, and for carrying away the steam in every washhouse in the laundry ; and
 - (b) all stoves for heating irons must be sufficiently separated from any ironing-room, and gas irons emitting any noxious fumes must not be used ; and
- (ce) This section is repealed by the Factory and Workshop Act, 1907, which is printed at p. 863, *infra* ; and see sects. 1 and 3 of that Act.

- (c) the floors must be kept in good condition and drained in such manner as will allow the water to flow off freely.

A laundry in which these provisions are contravened shall be deemed to be a factory not kept in conformity with this Act.

(4) Nothing in this section shall apply to any laundry in which the only persons employed are—

- (a) inmates of any prison, reformatory, or industrial school or other institution for the time being subject to inspection under any Act other than this Act; or
 - (b) inmates of an institution conducted in good faith for religious or charitable purposes; or
 - (c) members of the same family dwelling there,
- or in which not more than two persons dwelling elsewhere are employed.

In a laundry attached to an hotel, there were washed (i) the hotel linen, (ii) the hotel servants' clothes, by way of their remuneration in part, (iii) the visitors' clothes, they paying so much per article: *Held*, it was not a "laundry" within the similar section (sect. 22) of the Act of 1895: *Caledonian Railway Co. v. Paterson* (1898), 1 F. 24. But see now Factory and Workshop Act, 1907, printed at p. 863, *infra*.

See sect. 10 of the Truck Act, 1896.

(v) *Docks.*

104.—(1) The provisions of this Act with respect to—

- (i) Power to make orders as to dangerous machines (section seventeen);
- (ii) Accidents;
- (iii) Regulations for dangerous trades;
- (iv) Powers of inspectors (section one hundred and nineteen); and
- (v) Fines in case of death or injury (section one hundred and thirty-six);

shall have effect as if every dock, wharf, quay, and warehouse, and all machinery or plant used in the process of loading or unloading or coaling any ship in any dock, harbour, or canal were included in the word "factory," and the purpose for which the machinery or plant is used were a manufacturing process; and as if the person who by himself, his agents, or workmen, uses any such machinery or plant for the before-mentioned purpose were the occupier of the premises; and for the purpose of the enforcement of those provisions the person having the actual use or occupation of a dock, wharf, quay, or warehouse, or of any premises within the same or forming part thereof, and the person so using any such machinery or plant shall be deemed to be the occupier of a factory.

(2) For the purposes of this section the expression "plant" includes any gangway or ladder used by any person employed to load or unload or coal a ship, and the expressions "ship" and "harbour" have the same meanings as in the Merchant Shipping Act, 1894.

57 & 58 Vict.
c. 60.

There are alterations in this section. Many of the decisions on sect. 7, subsects. (1) and (2), of the Workmen's Compensation Act, 1897, may be consulted on the construction of this and the following section, *e.g.*:—

- (a) A ship occupying space in a dock which is a factory: *Raine v. Jobson*, [1901] A. C. 404; *Cattermole v. Atlantic Transport*, [1902] 1 K. B. 204; *Bartell v. Gray*, [1902] 1 K. B. 225.
- (b) "Wharf": *Ellis v. Cory*, [1902] 1 K. B. 38; *Haddock v. Humphrey*, [1900] 1 Q. B. 609; *Kenny v. Harrison*, [1902] 2 K. B. 168.
- (c) "Warehouse": *Wilmott v. Paton*, [1902] 1 K. B. 237; *Green v. Britten*, [1904] 1 K. B. 350.
- (d) "Loading": *Stuart v. Nixon and Bruer*, [1901] A. C. 79.
- (e) "Actual use or occupation": *Merrill v. Wilson*, [1901] 1 Q. B. 35; *Raine v. Jobson*, *ubi sup.*; *Bartell v. Gray*, *ubi sup.*; *Wearings v. Kirk and Randall*, [1904] 1 K. B. 213; *Handford v. George Clark & Co.*, [1907] 2 K. B. 409.

See the Secretary of State's Regulations as to the operations mentioned in this section, which have been certified to be "dangerous" under sect. 79, *supra* (St. R. & O. 1904, p. 146).

Sub-sect. (1) (ii). "Accidents": see corresponding note on sect. 106, *infra*.

(vi) *Buildings.*

105.—(1) The provisions of this Act with respect to—

- (i) Power to make orders as to dangerous machines (section seventeen);
- (ii) Accidents;
- (iii) Regulations for dangerous trades;
- (iv) Powers of inspectors (section one hundred and nineteen); and
- (v) Fines in case of death or injury (section one hundred and thirty-six);

shall have effect as if any premises on which machinery worked by steam, water, or other mechanical power is temporarily used for the purpose of the construction of a building or any structural work in connexion with a building were included in the word "factory" and the purpose for which the machinery is used were a manufacturing process, and as if the person who, by himself, his agents, or workmen, temporarily uses any such machinery for the before-mentioned purpose were the occupier of the said premises; and for the purpose of the enforcement of those provisions the person so using any such machinery shall be deemed to be the occupier of a factory.

(2) The provisions of this Act with respect to notice of accidents, and the formal investigation of accidents, shall have effect as if—

- (a) any building which exceeds thirty feet in height, and which is being constructed or repaired by means of a scaffolding; and
- (b) any building which exceeds thirty feet in height, and in which more than twenty persons, not being domestic servants, are employed for wages, were included in the word "factory," and, as if, in the first case, the employer of the persons engaged in the construction or repair and, in the second case, the occupier of the building, were the occupier of a factory.

See the note on sect. 104 and the following decisions upon Workmen's Compensation Act, 1897, s. 7:—

- (a) "Mechanical power": *Wrigley v. Bagley*, [1901] 1 K. B. 780; *Wilmott v. Paton*, [1902] 1 K. B. 237.
- (b) "Thirty feet in height": *Billings v. Holloway*, [1899] 1 Q. B. 70; *Rixson v. Pritchard*, [1900] 1 Q. B. 800; *Hoddinott v. Newton*, [1901] A. C. 49; *McGrath v. Neill*, [1902] 1 K. B. 211.
- (c) "Constructed": *Hoddinott v. Newton*, *ubi sup.*; *Plant v. Wright*, [1905] 1 K. B. 353.
- (d) "Scaffolding": *Veazey v. Chattle*, [1902] 1 K. B. 494; *Marshall v. Radforth*, [1902] 2 K. B. 176; *Crowther v. West Riding Window Cleaning Co.*, [1904] 1 K. B. 232; *O'Brien v. Dobbin*, [1905] 1 K. B. 346.

Sub-sect. (2). "Notice of accidents": see sect. 19, *supra*, and Notice of Accidents Act, 1906, ss. 4 and 5, *infra*, at p. 859.

(vii) *Railways.*

106.—(1) Where any line or siding not being part of a railway within the meaning of the Railway Employment (Prevention of Accidents) Act, 1900 (*d*), is used in connexion with a factory or workshop, or with any place to which any of the provisions of this Act are applied, the provisions of this Act with respect to—

- (i) Power to make orders as to dangerous machines (section seventeen);
- (ii) Accidents;

(*d*) Sect. 16, printed at p. 567.

Application of certain provisions to buildings.

Application of certain provisions to railway sidings.
63 & 64 Viet. c. 27.

- (iii) Regulations for dangerous trades ;
 - (iv) Powers of inspectors (section one hundred and nineteen) ; and
 - (v) Fines in case of death or injury (section one hundred and thirty-six) ;
- shall have effect as if the line or siding were part of the factory or workshop.
- (2) If any such line or siding is used in connexion with more than one factory or workshop belonging to different occupiers, the foregoing provisions shall have effect as if the line or siding were a separate factory.

This is new.

Sub-sect. (1) (ii). "Accidents": see sect. 19, *supra*, and sects. 4 and 5 of the Notice of Accidents Act, 1906, printed at p. 859, *infra*.

PART VI.

HOME WORK.

Lists of
outworkers
to be kept in
certain trades.

107. In the case of persons employed in such classes of work as may from time to time be specified by Special Order of the Secretary of State —

- (1) The occupier of every factory and workshop and every contractor employed by any such occupier in the business of the factory or workshop shall—
 - (a) keep in the prescribed form and manner, and with the prescribed particulars, lists showing the names and addresses of all persons directly employed by him, either as workmen or as contractors, in the business of the factory or workshop, outside the factory or workshop, and the places where they are employed ; and
 - (b) send to an inspector such copies of or extracts from those lists as the inspector may from time to time require ; and
 - (c) send on or before the first day of February and the first day of August in each year copies of those lists to the district council of the district in which the factory or workshop is situate.
- (2) Every district council shall cause the lists received in pursuance of this section to be examined, and shall furnish the name and place of employment of every outworker included in any such list whose place of employment is outside its district to the council of the district in which his place of employment is.
- (3) The lists kept by the occupier or contractor shall be open to inspection by any inspector under this Act, and by any officer duly authorised by the district council, and the copies sent to the council and the particulars furnished by one council to another shall be open to inspection by any inspector under this Act.
- (4) This section shall apply to any place from which any work is given out, and to the occupier of that place, and to every contractor employed by any such occupier in connexion with the said work, as if that place were a workshop.
- (5) In the event of a contravention of this section by the occupier of a factory, workshop, or place, or by a contractor, the occupier or contractor shall be liable to a fine not exceeding forty shillings, and in the case of a second or subsequent offence, not exceeding five pounds.

This is new.

See order of May 23, 1907 (St. R. & O. 1907, *Factory and Workshop*, p. 156).

108.—(1) If the district council within whose district is situate a place in which work is carried on for the purpose of or in connexion with the business of a factory or workshop give notice in writing to the occupier of the factory or workshop, or to any contractor employed by any such occupier, that that place is injurious or dangerous to the health of the persons employed therein, then, if the occupier or contractor after the expiration of one month from receipt of the notice gives out work to be done in that place, and the place is found by the court having cognizance of the case to be so injurious or dangerous, he shall be liable to a fine not exceeding ten pounds.

Employment of person in unwholesome premises.

(2) This section shall apply in the case of the occupier of any place from which any work is given out as if that place were a workshop.

(3) This section shall not apply except in the case of persons employed in such classes of work as the Secretary of State may specify by Special Order.

Sub-sect. (3). See order under preceding section.

109. If the occupier of a factory or workshop or of any place from which any work is given out, or any contractor employed by any such occupier, causes or allows wearing apparel to be made, cleaned, or repaired, in any dwelling-house or building occupied therewith, whilst any inmate of the dwelling-house is suffering from scarlet fever or small-pox, then, unless he proves that he was not aware of the existence of the illness in the dwelling-house, and could not reasonably have been expected to become aware of it, he shall be liable to a fine not exceeding ten pounds.

Making of wearing apparel where there is scarlet fever or small-pox.

110.—(1) If any inmate of a house is suffering from an infectious disease to which this section applies, the district council of the district in which the house is situate may make an order forbidding any work to which this section applies to be given out to any person living or working in that house, or such part thereof as may be specified in the order, and any order so made may be served on the occupier of any factory or workshop, or any other place from which work is given out, or on the contractor employed by any such occupier.

Prohibition of home work in places where there is infectious disease.

(2) The order may be made notwithstanding that the person suffering from an infectious disease may have been removed from the house, and the order shall be made either for a specified time or subject to the condition that the house or part thereof liable to be infected shall be disinfected to the satisfaction of the medical officer of health, or that other reasonable precautions shall be adopted.

(3) In any case of urgency the powers conferred on the district council by this section may be exercised by any two or more members of the council acting on the advice of the medical officer of health.

(4) If any occupier or contractor on whom an order under this section has been served contravenes the provisions of the order, he shall be liable to a fine not exceeding ten pounds.

(5) The infectious diseases to which this section applies are the infectious diseases required to be notified under the law for the time being in force in relation to the notification of infectious diseases (*ad*), and the work to which this section applies is the making, cleaning, washing, altering, ornamenting, finishing and repairing of wearing apparel and any work incidental thereto,

(*ad*) See Infectious Disease Notification Act, 1889, s. 6.

and such other classes of work as may be specified by special order of the Secretary of State.

This is new.

Sub-sect. (5). See order of May 23, 1907, cited under sect. 107, *supra*.

Application of
Act to
domestic
factories and
workshops.

111. The application of this Act to domestic factories (*e*) and domestic workshops (*e*) shall be subject to the following provisions ; —

- (1) The regulations with respect to the hours of employment of women, young persons, and children, shall not apply to any such factory or workshop, and in lieu thereof the following regulations shall be observed therein : —
 - (a) A young person or child shall not be employed in the factory or workshop except during the period of employment herein-after mentioned ; and
 - (b) The period of employment for a young person shall, except on Saturday, begin at six o'clock in the morning and end at nine o'clock in the evening, and shall on Saturday begin at six o'clock in the morning and end at four o'clock in the afternoon ; and
 - (c) There shall be allowed to every young person for meals and absence from work during the period of employment not less, except on Saturday, than four hours and a half, and on Saturday than two hours and a half ; and
 - (d) The period of employment for a child on every day either shall begin at six o'clock in the morning and end at one o'clock in the afternoon, or shall begin at one o'clock in the afternoon and end at eight o'clock in the evening, or on Saturday at four o'clock in the afternoon ; and for the purpose of the provisions of this Act respecting education such child shall be deemed, according to circumstances, to be employed in a morning or afternoon set ; and
 - (e) A child shall not be employed before the hour of one in the afternoon in two successive periods of seven days, nor after that hour in two successive periods of seven days ; and a child shall not be employed on Saturday in any week before the hour of one in the afternoon if on any other day in the same week he has been employed before that hour, nor after that hour if on any other day of the same week he has been employed after that hour ; and
 - (f) A child shall not be employed continuously for more than five hours without an interval of at least half-an-hour for a meal.
- (2) The requirement as to making certain entries and reports when a woman, young person, or child is employed in pursuance of an exception (*f*), shall not apply except so far as may be prescribed from time to time by the Secretary of State.
- (3) The provisions of this Act with respect to certificates of fitness for employment (*g*) shall apply to a domestic factory as if it were a workshop and not a factory.

(*e*) Defined sect. 115.

(*g*) Sects. 63—67.

(*f*) Sect. 60 (1).

(4) The following provisions shall not apply to a domestic factory or to a domestic workshop, namely:—

- (a) the provisions as to meal hours being simultaneous, and as to prohibition of employment during meal times (*h*);
- (b) the provisions as to affixing notices and abstracts, and as to specifying certain matters in notices so affixed (*i*);
- (c) the provisions as to holidays (*k*);
- (d) the provisions as to notices of accidents (*l*);
- (e) the provisions as to means of ventilation, the drainage of floors, and thermometers (*m*);
- (f) the provisions as to the keeping of a general register (*n*).

(5) The provisions of section one of this Act (relating to the sanitary condition of a factory) shall not apply to a domestic factory.

Sub-sect. 4 (e) and (f) are new.

112. If any manufacture, process, or description of manual labour, which in pursuance of this Act has been certified by the Secretary of State to be dangerous, is carried on in a domestic factory or workshop, all the provisions of this Act shall apply, as if the place were a factory or workshop other than a domestic factory or workshop.

Dangerous processes in domestic factories and workshops.

This is new.

113. The Secretary of State shall give notice of the provisions of this Act relating to domestic factories and workshops by the publication of the prescribed abstract or otherwise as he thinks fit.

Abstracts for domestic factories and workshops.

This is new.

114.—(1) The exercise in a private house or a private room by the family dwelling therein, or by any of them, of manual labour by way of trade or for purposes of gain in or incidental to any of the following handicrafts namely:—

Non-application of Act to certain domestic workshops.

- (i) straw plaiting, or
- (ii) pillow-lace making, or
- (iii) glove making,

shall not of itself constitute the house or room a workshop within the meaning of this Act.

When it is proved to the satisfaction of the Secretary of State that by reason of the light character of the handicraft carried on in any private house or private room by the family dwelling therein, or by any of them, it is expedient to extend the provisions of this sub-section to that handicraft, he may by special order extend the same accordingly. Part Two of this Act shall apply, so far as circumstances admit, as if the order were an order extending an exception.

(2) The exercise in a private house or a private room by the family

(*h*) Sect. 33.
(*i*) Sect. 128.
(*k*) Sect. 35.

(*l*) Sect. 19.
(*m*) Sects. 7, 8.
(*n*) Sect. 129.

dwelling therein, or by any of them, of manual labour for the purposes of gain in or incidental to any of the following purposes, namely,—

- (i) the making of any article or of part of any article; or
- (ii) the altering, repairing, ornamenting, or finishing of any article; or
- (iii) the adapting for sale of any article,

shall not of itself constitute that house or room a workshop, where the labour is exercised at irregular intervals, and does not furnish the whole or principal means of living to the family.

Sub-sect. (2) (ii). In application to laundries, after “ornamenting” are to be inserted the words “washing, cleaning”: Factory and Workshop Act, 1907, s. 4, printed *infra*.

Definitions of
“domestic
factory” and
“domestic
workshop.”

115. The expressions “domestic factory” and “domestic workshop” mean a private house, room, or place which, though used as a dwelling, is by reason of the work carried on there a factory or a workshop, as the case may be, within the meaning of this Act, and in which neither steam, water, nor other mechanical power is used in aid of the manufacturing process carried on there, and in which the only persons employed are members of the same family dwelling there.

PART VII.

PARTICULARS OF WORK AND WAGES.

Particulars of
work or wages
to be given
to piece
workers.

116.—(1) In every textile factory the occupier shall, for the purpose of enabling each worker who is paid by the piece to compute the total amount of wages payable to him in respect of his work, cause to be published particulars of the rate of wages applicable to the work to be done, and also particulars of the work to which that rate is to be applied, as follows:—

- (a) In the case of weavers in the worsted and woollen, other than the hosiery, trades, the particulars of the rate of wages applicable to the work done by each weaver, shall be furnished to him in writing at the time when the work is given out to him, and shall also be exhibited on a placard not containing any other matter, and posted in a position where it is easily legible:
- (b) In the case of weavers in the cotton trade, the particulars of the rate of wages applicable to the work to be done by each weaver shall be furnished to him in writing at the time when the work is given out to him, and the basis and conditions by which the prices are regulated and fixed shall also be exhibited in each room on a placard not containing any other matter, and posted in a position where it is easily legible:
- (c) In the case of every other worker, the particulars of the rate of wages applicable to the work to be done by each worker shall be furnished to him in writing at the time when the work is given out to him; provided that if the same particulars are applicable to the work to be done by each of the workers in one room it shall be sufficient to exhibit them in that room on a placard not containing any other matter, and posted in a position where it is easily legible:
- (d) Such particulars of the work to be done by each worker as affect the amount of wages payable to him shall (except so far as they are ascertainable by an automatic indicator) be furnished to him in writing at the time when the work is given out to him:

- (e) The particulars either as to rate of wages or as to work shall not be expressed by means of symbols :
- (f) Where an automatic indicator is used for ascertaining work, the indicator shall have marked on its case the number of teeth in each wheel and the diameter of the driving roller, except that in the case of spinning machines with traversing carriages the number of spindles and the length of the stretch in such machines shall be so marked in substitution for the diameter of the driving roller :
- (g) Where such particulars of the work to be done by each worker as affect the amount of wages payable to him are ascertained by an automatic indicator, and a placard containing the particulars as to the rate of wages is exhibited in each room, in pursuance of an agreement between employers and workmen, and in conformity with the requirements of this section, the exhibition thereof shall be a sufficient compliance with this section.
- (2) If the occupier fails to comply with the requirements of this section, or fraudulently uses a false indicator for ascertaining the particulars or amount of any work paid for by the piece, or if any workman fraudulently alters an automatic indicator, the occupier or workman, as the case may be, shall be liable for each offence to a fine not exceeding ten pounds, and in the case of a second or subsequent conviction within two years from the last conviction for that offence not less than one pound. Provided that an indicator shall not be deemed false if it complies with the requirements of this section.
- (3) If anyone engaged as a worker in a factory, having received any such particulars, whether they are furnished directly to him or to a fellow workman, discloses the particulars for the purpose of divulging a trade secret he shall be liable to a fine not exceeding ten pounds.
- (4) If anyone for the purpose of obtaining knowledge of or divulging a trade secret solicits or procures a person so engaged in a factory to disclose any such particulars, or with that object pays or rewards any such person, or causes any such person to be paid or rewarded for disclosing any such particulars, he shall be liable to a fine not exceeding ten pounds.
- (5) The Secretary of State, on being satisfied by the report of an inspector that the provisions of this section are applicable to any class of non-textile factories, or to any class of workshops, may, if he thinks fit, by Special Order, apply the provisions of this section to any such class, subject to such modifications as may in his opinion be necessary for adapting these provisions to the circumstances of the case. He may also by any such order apply those provisions, subject to such modifications as may, in his opinion, be necessary for adapting them to the circumstances of the case, to any class of persons of whom lists may be required to be kept under the provisions of this Act relating to outworkers, and to the employers of those persons.

Sub-sect. (1) (b) and the latter part of sub-sect. (5) are new.

Sub-sect. (5). See the following orders :—Sept. 2, 1898 (St. R. & O. Rev. 1904, Vol. IV., Factory and Workshop, p. 74 ; L. G., Sept. 9, 1898) ; July 12, 1900 (*ibid.* p. 75 ; L. G., July 17, 1900) ; two dated July 14, 1902 (*ibid.* p. 77 ; L. G., July 22, 1902) ; Jan. 5, 1903 (*ibid.* p. 81 ; L. G., Jan. 6, 1903) ; April 22, 1903 (*ibid.* p. 82 ; L. G., April 28, 1903) ; Dec. 17, 1903 (*ibid.* p. 84 ; L. G., Dec. 18, 1903) ; two, dated May 23, 1907 (St. R. & O. 1907, pp. 159, 161).

Inspection of weights and measures used in ascertaining wages.

117. Every Act for the time being in force relating to weights and measures shall extend to weights, measures, scales, balances, steelyards, and weighing machines used in a factory or workshop in checking or ascertaining the wages of any person employed therein, in like manner as if they were used in the sale of goods, and as if the factory or workshop were a place where goods are kept for sale, and every such Act shall apply accordingly, and every inspector of, or other person authorised to inspect or examine weights and measures, shall inspect, stamp, mark, search for, and examine the said weights and measures, scales, balances, steelyards, and weighing machines accordingly, and for that purpose shall have the same powers and duties as he has in relation to weights, measures, scales, balances, steelyards, and weighing machines, used in the sale of goods.

PART VIII.

ADMINISTRATION.

(i) *Inspection.*

Appointment and duties of inspectors and clerks and servants.

118.—(1) The Secretary of State, with the approval of the Treasury as to numbers and salaries, may appoint such inspectors (under whatever title he may from time to time fix) and such clerks and servants as he thinks necessary for the execution of this Act, and may assign to them their duties and award them their salaries, and may appoint a chief inspector with an office in London, and may regulate the cases and manner in which the inspectors, or any of them, are to execute and perform the powers and duties of inspectors under this Act, and may remove such inspectors, clerks, and servants.

(2) In the appointment of inspectors of factories in Wales and Monmouthshire, among candidates otherwise equally qualified, persons having a knowledge of the Welsh language shall be preferred.

(3) Notice of the appointment of every inspector shall be published in the London Gazette.

(4) The salaries of the inspectors, clerks, and servants, and the expenses incurred by them or by the Secretary of State in the execution of this Act, shall be paid out of moneys provided by Parliament.

(5) A person who is the occupier of a factory or workshop, or is directly or indirectly interested therein or in any process or business carried on therein, or in a patent connected therewith, or is employed in or about a factory or workshop, shall not act as an inspector.

(6) An inspector shall not be liable to serve in any parochial or municipal office.

(7) Such annual report of the proceedings of the inspectors as the Secretary of State directs shall be laid before both Houses of Parliament.

(8) A reference in this Act to an inspector refers, unless it is otherwise expressed, to an inspector appointed in pursuance of this section, and a notice or other document required by this Act to be sent to an inspector shall be sent to such inspector as a Secretary of State directs, by declaration

published in the London Gazette or otherwise as he thinks expedient for making the same known to all persons interested.

119.—(1) An inspector shall, for the purpose of the execution of this Act, have power to do all or any of the following things; namely:— Powers of inspectors.

- (a) To enter, inspect, and examine at all reasonable times, by day and night, a factory and a workshop, and every part thereof, when he has reasonable cause to believe that any person is employed therein, and to enter by day any place which he has reasonable cause to believe to be a factory or workshop; and
- (b) To take with him in either case a constable into a factory or workshop in which he has reasonable cause to apprehend any serious obstruction in the execution of his duty; and
- (c) To require the production of the registers, certificates, notices, and documents kept in pursuance of this Act, and to inspect, examine, and copy the same; and
- (d) To make such examination and inquiry as may be necessary to ascertain whether the enactments for the time being in force relating to public health and the enactments of this Act are complied with, so far as respects the factory or workshop and the persons employed therein; and
- (e) To enter any school in which he has reasonable cause to believe that children employed in a factory or workshop are for the time being educated; and
- (f) To examine, either alone or in the presence of any other person (*uu*), as he thinks fit, with respect to matters under this Act, every person whom he finds in a factory or workshop, or such a school as aforesaid, or whom he has reasonable cause to believe to be or to have been within the preceding two months employed in a factory or workshop, and to require every such person to be so examined and to sign a declaration of the truth of the matters respecting which he is so examined; and
- (g) To exercise such other powers as may be necessary for carrying this Act into effect.

(2) The occupier of every factory and workshop, his agents and servants, shall furnish the means required by an inspector as necessary for an entry, inspection, examination, inquiry, or the exercise of his powers under this Act in relation to that factory or workshop.

(3) If any person wilfully delays an inspector in the exercise of any power under this section, or fails to comply with the requisition of an inspector in pursuance of this section, or to produce any certificate or document which he is required by or in pursuance of this Act to produce, or conceals or prevents, or attempts to conceal or prevent a woman, young person, or child, from appearing before or being examined by an inspector, that person shall be deemed to obstruct an inspector in the execution of his duties under this Act:

Provided that no one shall be required under this section to answer any question or to give any evidence tending to criminate himself.

(4) Where an inspector is obstructed in the execution of his duties under this Act, the person obstructing him shall be liable to a fine not exceeding

(*uu*) As to charitable institutions, see Factory and Workshop Act, 1907, s. 5 (2) (d), (printed at p. 863, *infra*).

five pounds; and where an inspector is so obstructed in a factory or workshop, other than a domestic factory or a domestic workshop, the occupier of that factory or workshop shall be liable to a fine not exceeding five, or where the offence is committed at night twenty, pounds; and where an inspector is so obstructed in a domestic factory or a domestic workshop, the occupier shall be liable to a fine not exceeding one pound, or where the offence is committed at night five pounds; and in the case of a second or subsequent conviction under this section in relation to a factory within two years from the last conviction for the same offence, a fine not less than one pound shall be imposed for each offence.

For other powers possessed by "inspectors of factories" see sect. 5, *supra*; Truck Act, 1887, sect. 13, sub-sect. (2), and Truck Act, 1896, sect. 10; Employment of Children Act, 1903, sect. 9; Prevention of Cruelty to Children Act, 1904, sect. 3, sub-sect. (2); Factory and Workshop Act, 1907, s. 6.

Right of
inspector to
conduct pro-
ceedings
before magis-
trates.

120. An inspector, if so authorised in writing under the hand of the Secretary of State, may, although he is not a counsel, or solicitor, or law agent, prosecute, conduct, or defend, before a court of summary jurisdiction or justice, any information, complaint, or other proceeding arising under this Act, or in the discharge of his duty as inspector.

Certificate of
appointment
of inspector.

121. Every inspector shall be furnished with the prescribed certificate of his appointment, and on applying for admission to a factory or workshop shall, if so required, produce the said certificate to the occupier.

(ii) *Certifying Surgeons.*

Appointment
and duties of
certifying
surgeons.

122.—(1) Subject to such regulations as may be made by the Secretary of State, an inspector may appoint a sufficient number of duly registered medical practitioners to be certifying surgeons for the purposes of this Act, and may revoke any such appointment.

(2) Every appointment and revocation of appointment of a certifying surgeon may be annulled by the Secretary of State upon appeal to him for that purpose.

(3) A surgeon who is the occupier of a factory or workshop, or is directly or indirectly interested therein, or in any process or business carried on therein, or in a patent connected therewith, shall not be a certifying surgeon for that factory or workshop.

(4) The Secretary of State may make rules for the guidance of certifying surgeons, and for the particulars to be registered respecting their visits, and for the forms of certificates and other documents to be used by them.

(5) Every certifying surgeon shall, if so directed by the Secretary of State, make any special inquiry and re-examine any young person or child.

(6) Every certifying surgeon shall in each year make at the prescribed time a report in the prescribed form to the Secretary of State as to the persons inspected during the year and the results of the inspection.

See sects. 63—67, *supra*.

As to charitable institutions, see Factory and Workshop Act, 1907, s. 5 (2) (b).

When poor
law medical
officer is to act

123. Where there is no certifying surgeon for a factory or workshop, the poor law medical officer for the district in which the factory or workshop is

situate shall act for the time being as the certifying surgeon for that factory or workshop. as certifying surgeon.

This is new.

124.—(1) The fees to be paid to a certifying surgeon in respect of the examination of, and grant of certificates of fitness for employment for, young persons and children, shall be regulated as follows:— Fees of certifying surgeons.

- (a) The occupier of the factory may agree with the certifying surgeon as to the amount of the fees;
- (b) In the absence of agreement the fees shall be in accordance with the scale set forth in Part I. of the Fifth Schedule to this Act, or with such scale as may be substituted therefor by the Secretary of State;
- (c) The occupier shall pay the fees on the completion of the examination, or if any certificates are granted, at the time at which the surgeon signs the certificates, or at any other time directed by an inspector;
- (2) The fees to be paid to a certifying surgeon in cases where, in pursuance of a direction of the Secretary of State or of regulations made under this Act, he is required to examine the persons employed in a factory or workshop, shall be in accordance with the scale set forth in Part II. of the Fifth Schedule to this Act, or with such scale as may be substituted therefor by the Secretary of State. Such fees shall, where the examination is in pursuance of a direction of the Secretary of State, be paid by the Secretary of State, and where the examination is in pursuance of regulations be paid by the occupier of the factory or workshop.

(3) The fee to be paid to a certifying surgeon for the investigation of an accident in pursuance of this Act shall be such sum, not more than ten nor less than three shillings, as the Secretary of State may prescribe, and shall be paid by the Secretary of State as expenses incurred in the execution of this Act.

(iii) *Local Authorities.*

125. For the purpose of their duties with respect to workshops and work-places under this Act, and under the law relating to public health, the district council and their officers shall, without prejudice to their other powers, have all such powers of entry, inspection, taking legal proceedings, or otherwise, as an inspector under this Act. Powers of local authorities and their officers.

(iv) *Special Orders.*

126. The following provisions shall apply to such orders made by the Secretary of State in pursuance of this Act as are in this Act referred to as Special Orders:— Provisions as to special orders of Secretary of State.

- (1) The order shall be under the hand of the Secretary of State and shall be published in such manner as the Secretary of State thinks best adapted for the information of all persons concerned, and shall come into operation at the date of its publication, or at any later date mentioned in the order;
- (2) The order may be temporary or permanent, conditional or unconditional, and whether granting or extending an exception or prohibition,

or directing the adoption of any special means or provision, or rescinding a previous order, or effecting any other thing, may do so either wholly or partly :

- (3) The order shall be laid as soon as may be before both Houses of Parliament, and if either House of Parliament, within the next forty days after the order has been so laid before that House, resolves that the order ought to be annulled, it shall after the date of that resolution be of no effect, without prejudice to the validity of anything done in the meantime under the order or to the making of a new order :
- (4) The order, while it is in force, shall, so far as is consistent with the tenor thereof, apply as if it formed part of the enactment which provides for the making of the order.

(v) *Notices, Registers, and Returns.*

Notice of
occupation of
factory or
workshop.

127.—(1) Every person shall, within one month after he begins to occupy a factory or workshop, serve on the inspector for the district a written notice containing the name of the factory or workshop, the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work, the nature and amount of the moving power therein, and the name of the person or firm under which the business of the factory or workshop is to be carried on.

(2) In the event of a contravention of this section by the occupier of a factory or workshop, he shall be liable to a fine not exceeding five pounds.

(3) Where an inspector receives notice in pursuance of this section with respect to a workshop, he shall forthwith forward the notice to the district council of the district in which the workshop is situate.

Affixing of
abstract and
notices.

128 (*nnn*).—(1) There shall be affixed at the entrance of every factory and workshop, and in such other parts thereof as an inspector for the time being directs, and be constantly kept so affixed in the prescribed form and in such position as to be easily read by the persons employed in the factory or workshop—

- (a) The prescribed abstract of this Act ; and
- (b) A notice of the name and address of the prescribed inspector ; and
- (c) A notice of the name and address of the certifying surgeon for the district ; and
- (d) A notice of the clock (if any) by which the period of employment and times for meals in the factory or workshop are regulated ; and
- (e) Every notice and document required by this Act to be affixed in the factory or workshop.

(2) In the event of a contravention of this section in a factory or workshop, the occupier of the factory or workshop shall be liable to a fine not exceeding forty shillings.

General
registers.

129 (*nnn*).—(1) In every factory and workshop there shall be kept a register, called the general register, showing in the prescribed form the prescribed particulars as to—

- (a) the children and young persons employed in the factory or workshop ; and

(*nnn*) As to charitable institutions, see Factory and Workshop Act, 1907, s. 5, sub-s. (2) (c) (printed at p. 863, *infra*).

- (b) the lime-washing of the factory or workshop; and
- (c) every accident occurring in the factory or workshop of which notice is required to be sent to an inspector; and
- (d) every special exception of which the occupier of the factory or workshop avails himself; and
- (e) such other matters as may be prescribed.

(2) Where any entry is required by this Act to be made in the general register, the entry made by the occupier of a factory or workshop or on his behalf shall, as against him, be admissible as *prima facie* evidence of the facts therein stated, and the failure to make any entry so required with respect to the observance of any provision of this Act shall be admissible as *prima facie* evidence that that provision has not been observed.

(3) The register shall at all reasonable times be open to inspection by the certifying surgeon of the district.

(4) The occupier of a factory or workshop shall send to an inspector such extracts from the general register as the inspector from time to time requires for the execution of his duties under this Act.

(5) If in any factory or workshop any requirement of this section is not complied with, the occupier shall be liable to a fine not exceeding five pounds.

This is new.

130.—(1) The occupier of every factory or workshop shall, on or before such days as the Secretary of State may direct, at intervals of not less than one nor more than three years, send to the Chief Inspector of Factories a correct return specifying, with respect to such day or days, or such period as the Secretary of State may direct, the number of persons employed in the factory or workshop, with such particulars as to the age, sex, and occupation of the persons employed as the Secretary of State may direct, and in default of complying with this section shall be liable to a fine not exceeding ten pounds.

Periodical
return of
persons em-
ployed.

(2) The occupier of any place to which any of the provisions of this Act apply shall, if so required by the Secretary of State, make to the Chief Inspector of Factories a like return as is required to be made by this section, and shall be liable to a like fine for default in compliance with the requirement.

Sub-sect. (2) is new.

The following orders have been made :—June 15, 1904; Feb. 6, 1905.

As to charitable institutions, see Factory and Workshop Act, 1907, s. 5 (2) (e).

131. Every district council shall keep a register of all workshops situate within their district.

Registers of
workshops.

This is new.

132. The medical officer of health of every district council shall, in his annual report to them, report specifically on the administration of this Act in workshops and workplaces, and he shall send a copy of his annual report, or so much of it as deals with this subject, to the Secretary of State.

Report of
medical
officer of
health on
administra-
tion of Act.

This is new.

Miscellaneous Provisions.

Notice by medical officer of health of employment of woman, young person, or child in workshops. Certificate of birth in case of young persons under sixteen and children.

133. Where any woman, young person, or child is employed in a workshop in which no abstract of this Act is affixed as by this Act required, and the medical officer of the district council becomes aware thereof, he shall forthwith give written notice thereof to the inspector for the district.

134. Where the age of any young person under the age of sixteen years or child is required to be ascertained or proved for the purposes of this Act, or for any purpose connected with the employment in labour or elementary education of the young person or child, any person shall on presenting a written requisition in such form and containing such particulars as may be from time to time prescribed by the Local Government Board, and on payment of a fee of sixpence, be entitled to obtain a certified copy under the hand of a registrar or superintendent registrar of the entry in the register, under the Births and Deaths Registration Acts, 1836 to 1874, of the birth of that young person or child: and such form of requisition shall on request be supplied without charge by every superintendent registrar and registrar of births, deaths, and marriages.

The form of the requisition has been prescribed in the following orders:—Of Dec. 23, 1901 (St. R. & O. Rev. 1901, Vol. IV., Factory and Workshop, p. 37; L. G., Dec. 27, 1901), for England and Wales; of Feb. 14, 1902 (*ibid.* p. 39), for Scotland; of May 2, 1902 (*ibid.* p. 41), for Ireland.

PART IX.

LEGAL PROCEEDINGS.

Fine for not keeping factory or workshop in conformity with Act.

135.—(1) If a factory or workshop is not kept in conformity with this Act, the occupier thereof shall be liable to a fine not exceeding ten pounds, and, in the case of a second or subsequent conviction in relation to a factory within two years from the last conviction for the same offence, not less than one pound for each offence.

(2) The court of summary jurisdiction, in addition to or instead of inflicting a fine, may order certain means to be adopted by the occupier, within the time named in the order, for the purpose of bringing his factory or workshop into conformity with this Act. The court may, on application, enlarge the time so named, but if, after the expiration of the time as originally named or enlarged by subsequent order, the order is not complied with, the occupier shall be liable to a fine not exceeding one pound for every day on which the non-compliance continues.

Fines in case of death or injury.

136. If any person is killed, or dies, or suffers any bodily injury or injury to health, in consequence of the occupier of a factory or workshop having neglected to observe any provision of this Act or any regulation made in pursuance of this Act, the occupier of the factory or workshop shall be liable to a fine not exceeding one hundred pounds, and, in the case of a second or subsequent conviction in relation to a factory within two years from the last conviction for the same offence, not less than one pound for each offence, and the whole or any part of the fine may be applied for the benefit of the injured person or his family, or otherwise as the Secretary of State determines:

Provided as follows:—

- (a) In the case of injury to health the occupier shall not be liable under this section unless the injury was caused directly by the neglect :
- (b) The occupier shall not be liable to fine under this section if an information against him for not observing the provision or regulation to the breach of which the death or injury was attributable, has been heard and dismissed previous to the time when the death or injury was inflicted.

See *Blenkinsop v. Ogden*, [1898] 1 Q. B. 783; *Groves v. Wimborne*, [1898] 2 Q. B. 402, and the notes on sect. 10, *supra*.

The offence created by this section is distinct from that created by sect. 135; so that the time for laying information (see sect. 116) is to be calculated by reference to the date of the "bodily injury": *R. v. Taylor*, [1908] 2 K. B. 237.

137.—(1) Where any person is employed in a factory or workshop, other than a domestic factory or a domestic workshop, contrary to the provisions of this Act, the occupier of the factory or workshop shall be liable to a fine not exceeding three, or if the offence was committed during the night five, pounds for each person so employed, and, in the case of a second or subsequent conviction in relation to a factory within two years from the last conviction for the same offence, not less than one pound for each offence; and where any person is so employed in a domestic factory or a domestic workshop the occupier shall be liable to a fine not exceeding one, or if the offence was committed during the night two pounds, for each person so employed, and, in the case of a second or subsequent conviction within two years from the last conviction in relation to a factory for the same offence, not less than one pound for each offence.

Fine for
employing
persons
contrary to
Act.

(2) If a woman, young person, or child is not allowed times for meals and absence from work as required by this Act, or during any part of the times allowed for meals or absence from work is, in contravention of the provisions of this Act, employed in the factory or workshop, or allowed to remain in any room, the woman, young person, or child shall be deemed to be employed contrary to the provisions of this Act.

138.—(1) If a young person or child is employed in a factory or workshop contrary to the provisions of this Act, the parent (o) of the young person or child shall be liable to a fine not exceeding twenty shillings for each offence, unless it appears to the court that the offence was committed without the consent, connivance, or wilful default of the parent.

Fine for
offence by
parent.

(2) If the parent of a child neglects to cause the child to attend school in accordance with this Act, he shall be liable to a fine not exceeding twenty shillings for each offence.

139. If any person—

- (a) forges or counterfeits any certificate for the purposes of this Act (for the forgery or counterfeiting of which no other punishment is provided); or
- (b) gives or signs any such certificate knowing the same to be false in any material particular; or
- (c) knowingly utters or makes use of any certificate so forged, counterfeited, or false as aforesaid; or

Forgery of
certificates,
false entries,
and false
declarations.

(o) Defined sect. 156.

- (d) knowingly utters or makes use of as applying to any person a certificate which does not so apply; or
- (e) personates any person named in a certificate; or
- (f) falsely pretends to be an inspector; or
- (g) wilfully connives at the forging, counterfeiting, giving, signing, uttering, making use, or personating as aforesaid; or
- (h) wilfully makes a false entry in any register, notice, certificate, or document, required by this Act to be kept or served or sent; or
- (i) wilfully makes or signs a false declaration under this Act; or
- (j) knowingly makes use of any such false entry or declaration,

he shall be liable to a fine not exceeding twenty pounds, or to imprisonment for a term not exceeding three months, with or without hard labour.

Fine on person actually committing offence for which occupier is liable.

Power of occupier to exempt himself from fine on conviction of the actual offender.

140. Where an offence for which the occupier of a factory or workshop is liable under this Act to a fine has in fact been committed by some agent, servant, workman, or other person, that agent, servant, workman, or other person, shall be liable to the like fine as if he were the occupier.

141.—(1) Where the occupier of a factory or workshop is charged with an offence against this Act, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the occupier of the factory or workshop proves to the satisfaction of the court—

- (a) that he has used due diligence to enforce the execution of this Act; and
- (b) that the said other person had committed the offence in question without his knowledge, consent, or connivance,

that other person shall be summarily convicted of the offence, and the occupier shall be exempt from any fine. The person so convicted shall, in the discretion of the court, be also liable to pay any costs incidental to the proceedings.

(2) When it is made to appear to the satisfaction of an inspector at the time of discovering an offence—

- (a) that the occupier of the factory or workshop has used all due diligence to enforce the execution of this Act; and
- (b) by what person the offence has been committed; and
- (c) that it has been committed without the knowledge, consent, or connivance of the occupier and in contravention of his orders,

the inspector shall proceed against the person whom he believes to be the actual offender without first proceeding against the occupier of the factory or workshop.

Owner of machine liable in certain cases instead of occupier.

142. Where in a factory the owner or hirer of a machine or implement moved by steam, water, or other mechanical power, is some person other than the occupier of the factory, the owner or hirer shall, so far as respects any offence against this Act committed in relation to a person who is employed in or about or in connexion with that machine or implement, and is in the employment or pay of the owner or hirer, be deemed to be the occupier of the factory.

143. A person shall not be liable in respect of a repetition of the same kind of offence from day to day to any larger amount of fines than the highest fine fixed by this Act for the offence, except—

Limit to cumulative fines.

- (a) where the repetition of the offence occurs after an information has been laid for the previous offence; or
- (b) where the offence is one of employing two or more persons, contrary to the provisions of this Act.

144.—(1) All offences under this Act shall be prosecuted, and all fines under this Act shall be recovered, on summary conviction, before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

Prosecution of offences and recovery and application of fines.

(2) A summary order may be made for the purposes of this Act by a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

(3) All fines imposed in pursuance of this Act shall, save as otherwise expressly provided for by this Act, be paid into the Exchequer.

(4) Where a proceeding is taken before a court of summary jurisdiction with respect to an offence against this Act alleged to be committed in or with reference to a factory or workshop, the occupier of the factory or workshop, and the father, son, or brother of the occupier of the factory or workshop, shall not be qualified to act as a member of the court.

(5) A person engaged in, or being an officer of any association of persons engaged in, the same trade or occupation as a person charged with any offence under this Act shall not act as a justice of the peace in hearing and determining the charge.

Sub-sect. (5) is new.

145. If any person feels aggrieved by a conviction or order made by a court of summary jurisdiction on determining an information or complaint under this Act, he may appeal therefrom to quarter sessions (*p*).

Appeal to quarter sessions.

146. The following provisions shall have effect with respect to summary proceedings for offences and fines under this Act:—

Limitation of time and general provisions as to summary proceedings.

- (1) The information shall be laid within three months after the date at which the offence comes to the knowledge of the inspector for the district within which the offence is charged to have been committed, or, in case of an inquest being held in relation to the offence, then within two months after the conclusion of the inquest, so, however, that it be not laid after the expiration of six months from the commission of the offence:
- (2) It shall be sufficient to allege that a factory or workshop is a factory or workshop within the meaning of this Act, without more:
- (3) It shall be sufficient to state the name of the ostensible occupier of the factory or workshop, or the title of the firm by which the occupier employing persons in the factory or workshop is usually known:
- (4) A conviction or order made in any matter arising under this Act, either originally or on appeal, shall not be quashed for want of form,

(*p*) For procedure see Summary Jurisdiction Acts.

and a conviction or order made by a court of summary jurisdiction against which a person is authorised by this Act to appeal shall not be removed by certiorari or otherwise, either at the instance of the Crown or of any private person, into a superior court, except for the purpose of the hearing and determination of a special case.

Sub-sect. (1). See *R. v. Taylor*, [1908] 2 K. B. 237.

Evidence in
summary
proceedings.

147.—(1) If a person is found in a factory or workshop, except at meal times, or while all the machinery of the factory or workshop is stopped, or for the sole purpose of bringing food to the persons employed in the factory or workshop between the hours of four and five o'clock in the afternoon, he shall, until the contrary is proved, be deemed for the purposes of this Act to have been then employed in the factory or workshop:

Provided that yards, playgrounds, and places open to the public view, schoolrooms, waiting rooms, and other rooms belonging to the factory or workshop in which no machinery is used or manufacturing process carried on, shall not be taken to be any part of the factory or workshop within the meaning of this enactment; and this enactment shall not apply to a domestic (*g*) factory or workshop.

(2) Where a young person or child is, in the opinion of the court, apparently of the age alleged by the informant, it shall lie on the defendant to prove that the young person or child is not of that age.

(3) A declaration in writing by a certifying surgeon for the district that he has personally examined a person employed in a factory or workshop in that district, and believes him to be under the age set forth in the declaration, shall be admissible in evidence of the age of that person.

(4) A copy of a conviction for an offence against this Act purporting to be certified under the hand of the clerk of the peace having the custody of the conviction to be a true copy shall be receivable as evidence, and every such clerk of the peace shall, on the written request of an inspector and payment of a fee of one shilling, deliver to him a copy of the conviction so certified.

Service of
notices and
documents,
&c.

148. Any notice, order, requisition, summons, and document, required or authorised to be served or sent for the purposes of this Act—

(a) may be served and sent by post, or by delivering the same to or at the residence of the person on or to whom it is to be served or sent, or (where he is the owner of a factory or workshop) by delivering the same or a true copy thereof to his agent, or (where he is the occupier of a factory or workshop) by delivering the same or a true copy thereof to his agent or to some person in the factory or workshop; and

(b) where it is required to be served on or sent to the occupier of a factory or workshop, shall be deemed to be properly addressed if addressed to the occupier of the factory or workshop at the factory or workshop, with the addition of the proper postal address, but without naming the person who is the occupier.

(*g*) See sects. 111—115, *supra*.

PART X.

SUPPLEMENTARY.

(i) *Application and Definitions.*

149.—(1) Subject to the provisions of this section, the following expressions have in this Act the meanings hereby assigned to them; that is to say:—

Factories and workshops to which Act applies.

The expression “textile factory” means any premises wherein or within the close or curtilage of which steam, water, or other mechanical power is used to move or work any machinery employed in preparing, manufacturing, or finishing, or in any process incident to the manufacture of cotton, wool, hair, silk, flax, hemp, jute, tow, china-grass, cocoa-nut fibre, or other like material, either separately or mixed together, or mixed with any other material, or any fabric made thereof:

Provided that print works, bleaching and dyeing works, lace warehouses, paper mills, flax scutch mills, rope works, and hat works shall not be deemed to be textile factories:

The expression “non-textile factory” means—

- (a) any works, warehouses, furnaces, mills, foundries, or places named in Part One of the Sixth Schedule to this Act; and
- (b) any premises or places named in Part Two of the said schedule wherein or within the close or curtilage or precincts of which steam, water, or other mechanical power is used in aid of the manufacturing process carried on there; and
- (c) any premises wherein or within the close or curtilage or precincts of which any manual labour is exercised by way of trade or for purposes of gain in or incidental to any of the following purposes, namely—
 - (i) the making of any article or of part of any article; or
 - (ii) the altering, repairing, ornamenting, or finishing of any article; or
 - (iii) the adapting for sale of any article,

and wherein or within the close or curtilage or precincts of which steam, water, or other mechanical power is used in aid of the manufacturing process carried on there:

The expression “factory” means textile factory and non-textile factory, or either of those descriptions of factories:

The expression “tenement factory” means a factory where mechanical power is supplied to different parts of the same building occupied by different persons for the purpose of any manufacturing process or handicraft, in such manner that those parts constitute in law separate factories, and for the purpose of the provisions of this Act with respect to tenement factories all buildings situate within the same close or curtilage shall be treated as one building:

The expression “workshop” means—

- (a) any premises or places named in Part Two of the Sixth Schedule to this Act, which are not a factory; and

- (b) any premises, room, or place, not being a factory, in which premises, room, or place, or within the close or curtilage or precincts of which premises, any manual labour is exercised by way of trade or for purposes of gain in or incidental to any of the following purposes, namely—
- (i) the making of any article or of part of any article; or
 - (ii) the altering, repairing, ornamenting, or finishing of any article; or
 - (iii) the adapting for sale of any article,
- and to or over which premises, room, or place the employer of the persons working therein has the right of access or control:

The expression “workshop” includes a tenement workshop:

The expression “tenement workshop” means any workplace in which, with the permission of or under agreement with the owner or occupier, two or more persons carry on any work which would constitute the workplace a workshop if the persons working therein were in the employment of the owner or occupier.

(2) A part of a factory or workshop may, with the approval in writing of the chief inspector, be taken for the purposes of this Act to be a separate factory or workshop.

(3) A room solely used for the purpose of sleeping therein shall not be deemed to form part of the factory or workshop for the purposes of this Act.

(4) Where a place situate within the close, curtilage, or precincts forming a factory or workshop is solely used for some purpose other than the manufacturing process or handicraft carried on in the factory or workshop, that place shall not be deemed to form part of the factory or workshop for the purposes of this Act, but shall, if otherwise it would be a factory or workshop, be deemed to be a separate factory or workshop, and be regulated accordingly.

(5) A place or premises shall not be excluded from the definition of a factory or workshop by reason only that the place or premises is or are in the open air.

(6) The exercise of any young person or child in any recognised efficient school, during a portion of the school hours, of any manual labour for the purpose of instructing the young person or child in any art or handicraft shall not be deemed to be an exercise of manual labour for the purpose of gain within the meaning of this Act.

The last two clauses of sub-sect. (1), and the sentence, “with the approval,” &c., in sub-sect. (2) are new.

In *Howarth v. Coles* (1862), 12 C. B. N. S. 139, it was held (under the 7 & 8 Viet. c. 15, and the Bleaching and Dyeing Works Act, 1860) that the term “finishing” meant finishing as incidental and ancillary to bleaching and dyeing. *Quære*, whether this decision could be supported under the present Act: see *Rogers v. Manchester Packing Co.*, [1898] 1 Q. B. 344: *vide* this note *infra*.

Weaving or plaiting of cotton-thread by steam, or other mechanical power, into a covering for strips of iron to be used in making crinoline skirts is a process “incidental to” the making of a cotton fabric (7 & 8 Viet. c. 15, s. 73): *Wymper v. Harney* (1865), 18 C. B. N. S. 243.

Thread was manufactured in hanks at respondent’s manufactory at M. These hanks were then sent to his manufactory at L. to be wound by machinery moved

by steam on to cops, and then on to spools.—*Held*, that the latter premises were a “factory” within 3 & 4 Will. IV. c. 103; and that the winding was a process “incidental to” the manufacture of thread: *Haydon v. Taylor* (1863), 33 L. J. M. C. 30.

The following are some of the older decisions on the term “factory” :—

A child was employed in “skutching”—that is the first process of finishing goods which have been printed—in a room where no persons were employed in printing figures. But this room had direct communication with the print works, in which all the processes of printing were carried on.—*Held*, that the child was employed in a “print-work”: *Hardcastle v. Jones* (1862), 3 B. & S. 153. See *Taylor v. Hickes* (1862), 12 C. B. N. S. 152. A child was employed by calico-printers. Bleaching, dyeing, and finishing or stiffening were done at one mill belonging to the appellants; printing at another. The mills were seven miles apart.—*Held*, that a child employed at the former was employed at an “incidental” printing process within 8 & 9 Vict. c. 29, and that the place where he was employed formed a part of “the establishment where the chief process of printing was carried on”: *Hoyle v. Oram* (1862), 12 C. B. N. S. 124; followed in *Coles v. Dickinson* (1864), 16 C. B. N. S. 604.

See *Haydon v. Taylor*, *ubi sup.*

A company carried on large works comprising the business of blast furnaces, iron rolling mills, engine building, and iron shipbuilding in all its branches. The whole of the several branches communicated, and were open from one end to the other, and were within one common boundary. A boy was employed as a rivet-boy, and in the department where he worked steam machinery was in use for cutting and shaping iron plates, and rivets were heated there; both the plates and rivets were used in the manufacture of a ship.—*Held*, that the department where the boy worked was a “factory” within 30 & 31 Vict. c. 103: *Palmer's Shipbuilding and Iron Co. v. Chaytor* (1869), L. R. 4 Q. B. 209.

A ship is not an “article,” *ibid.*

The following are decisions on sect. 93 of the Act of 1878 :—

Premises in which the processes of hooking, lapping, making up, and packing cloth are carried on, are a “factory,” even if none of such processes are carried on as incidental to bleaching and dyeing: *Rogers v. Manchester Packing Co.*, [1898] 1 Q. B. 344.

The respondents occupied premises which they used solely for the purpose of washing bottles and bottling beer, in their trade of wholesale and retail beer-dealers. Before the bottles were filled with beer, which was done by manual labour only, they were washed inside by a rotary brush, driven by a small gas-engine, the bottles being held in position by hand.—*Held*, upon these facts, that the respondents’ premises were not a “factory”: *Lave v. Graham*, [1901] 2 K. B. 327.

The respondents used their bottling stores for aerating and bottling beer. The process was as follows:—Carbonic-acid gas and beer were mixed together by mechanical power and then put into bottles by a tap, the nozzle of which was pulled down by hand into the neck of the bottle, the beer flowing from the tap and filling the bottle by the pressure of the gas.—*Held*, that the stores were a “factory”: *Hoare v. Truman, Hanbury & Buxton* (1902), 71 L. J. K. B. 380.

See the Scotch cases *Petrie v. Weir* (1900), 2 F. 1041; *Henderson v. Glasgow Corporation* (1900), 2 F. 1127.

For other “factories” see sects. 103, 104, 105, 106 of this Act.

“Workshop.” Premises which were used in the daytime as a shop for the sale of sweetmeats by retail were used at night after shop hours for the purpose of packing the sweetmeats into the ornamental boxes in which they were sold.—*Held*, that on these facts there was evidence to justify the finding that the premises were a “workshop” within sect. 93 of the Act of 1878: *Fullers, Limited v. Squire*, [1901] 2 K. B. 209.

150.—(1) This Act applies to factories and workshops belonging to the Crown; but in case of any public emergency the Secretary of State may, by order, to the extent and during the period named by him, exempt from this Act any factory or workshop belonging to the Crown, or any factory or workshop in respect of work which is being done on behalf of the Crown under a contract specified in the order.

(2) A factory or workshop belonging to or in the occupation of the Crown

Application
to Crown
factories and
workshops.

shall not be excluded from the operation of this Act by reason only that it is not carried on by way of trade or for the purpose of gain.

(3) The powers conferred by this Act on a district council or other local authority shall, in the case of a factory or workshop belonging to or in the occupation of the Crown, be exercised by an inspector under this Act.

This is new, but is founded upon the last paragraph of sect. 93 of the Act of 1878.

Power to treat separate branches as separate factories or workshops.

151. The Secretary of State may by Special Order direct, with respect to any class of factories or workshops, that different branches or departments of work carried on in the same factory or workshop shall, for all or any of the purposes of this Act, be treated as if they were different factories or workshops.

See the following orders:—Of March 27, 1897 (St. R. & O. Rev. 1904, Vol. IV. "Factory and Workshop," p. 86; L. G., April 2, 1897); of March 27, 1897 (*ibid.*, p. 87; *ibid.*, of January 19, 1899 (*ibid.*, p. 89; L. G., Jan. 24, 1899); of September 6, 1900 (*ibid.*, p. 90; L. G., Sept. 11, 1900); of Dec. 26, 1907 (St. R. & O. 1907, p. 138).

Definition of employment and working for hire.

152.—(1) A woman, young person, or child, who works in a factory or workshop, whether for wages or not, either in a manufacturing process or handicraft, or in cleaning any part of the factory or workshop used for any manufacturing process or handicraft, or in cleaning or oiling any part of the machinery, or in any other kind of work whatsoever incidental to or connected with the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein, shall, save as is otherwise provided by this Act, be deemed to be employed therein within the meaning of this Act.

(2) For the purposes of this Act an apprentice shall be deemed to work for hire.

Sub-sect. (1). *Prior v. Slaitheate Spinning Co.*, [1898] 1 Q. B. 881. See note on sect. 33, *supra*.

Application of Act to London.

153.—(1) In the application to the administrative county of London of the section of this Act (*r*) relating to the means of escape from fire, the London County Council shall take the place of the district council, and their expenses in the execution of that section shall be defrayed as part of their expenses in the management of the London Building Act, 1894.

(2) In the application to the administrative county of London of the section of this Act (*s*) giving power to make bye-laws providing for means of escape from fire, the reference to a district council shall be construed as a reference to the London County Council.

(3) The power of the London County Council under section one hundred and sixty-four of the London Building Act, 1894, to make bye-laws with respect to the means of escape from fire in buildings exceeding sixty feet in height shall extend to all factories and workshops whether exceeding sixty feet in height or not.

(4) Subject as aforesaid, references in this Act to a district council and

(*r*) Sect. 14.

(*s*) Sect. 15.

the district thereof shall, as regards the City of London, be construed as references to the court of common council and the city, and, as regards any other part of the administrative county of London, as references to the council of a metropolitan borough and the metropolitan borough.

154. References in this Act to a district council and the district thereof shall be construed as including references to the council of a county borough and the county borough. Application of Act to county boroughs.
155. The powers conferred by this Act on district councils shall be in addition to, and not in substitution for, any other powers which they may possess. Saving for existing powers of district councils.
- 156.—(1) In this Act unless the context otherwise requires,—
General definitions.
The expression “bank holiday” means a holiday under the Holidays Extension Act, 1875 : 38 & 39 Vict. c. 13.
The expression “child” means a person who is under the age of fourteen years, and who has not, being of the age of thirteen years, obtained the certificate of proficiency or attendance at school mentioned in Part III. of this Act (*t*) : “Child.”
The expression “machinery” includes any driving strap or band : “Machinery.”
The expression “mill-gearing” comprehends every shaft, whether upright, oblique, or horizontal, and every wheel, drum, or pulley, *or other appliance (v)* by which the motion of the first moving power is communicated to any machine appertaining to a manufacturing process : “Mill-gearing.”
The expression “night” means the period between nine o’clock in the evening and six o’clock in the succeeding morning : “Night.”
The expression “owner” has the meaning given to it by section four of the Public Health Act, 1875 : “Owner.”
The expression “parent” means a parent or guardian of, or person having the legal custody of, or the control over, or having direct benefit from the wages of, a young person or child : “Parent.”
The expression “prescribed” means prescribed for the time being by the Secretary of State : “Prescribed.”
The expression “process” includes the use of any locomotive : “Process.”
The expression “Special Order” means an order which is subject to the provisions of section one hundred and twenty-six of this Act with regard to Special Orders of the Secretary of State : “Special order.”
The expression “week” means the period between midnight on Saturday night and midnight on the succeeding Saturday night : “Week.”
The expression “woman” means a woman of the age of eighteen years and upwards : “Woman.”
The expression “young person” means a person who has ceased to be a child and is under the age of eighteen years (*t*). “Young person.”

(2) For the purposes of this Act employment shall be deemed to be continuous unless interrupted by an interval of at least half an hour.

(3) The factories and workshops named in the Sixth Schedule to this Act are in this Act referred to by the names therein assigned to them.

(*t*) New.

(*v*) The words in italics are new.

(4) References in this Act to regulations made under this Act shall be construed as including references to special rules established or requirements made under any previous Act.

Sub-sect. (2) is new.

Sub-sect. (4). *Vide* sect. 161 (2).

Men's
workshops.

157. The following provisions of this Act shall not apply to men's workshops, that is to say, workshops conducted on the system of not employing any woman, young person, or child therein :—

- (1) The sections in Part I. relating to temperature (*w*), thermometers (*w*), means of ventilation (*x*), drainage of floors (*y*), sanitary conveniences (*z*), opening of doors (*a*), power to make orders as to dangerous machinery (*b*), and inquests (*c*);
- (2) Part II. and Part III.;
- (3) The sections in Part IV. relating to fans (*d*) and to lavatories and meals (*e*);
- (4) Part VII.;
- (5) The sections of Part VIII. relating to the affixing of abstracts and notices (*f*), and the keeping of a general register (*g*), and the first subsection of the section relating to periodical returns (*h*).

Sub-sect. (2). Part II. relates to "employment." Part III. to "Education of children."

Sub-sect. (4). Part VII. relates to "Particulars of work and wages."

Saving for
young persons
employed in
repairs.

158. Nothing in this Act shall extend to any young person being a mechanic, artizan, or labourer, working only in repairing either the machinery in or any part of a factory or workshop.

(ii) *Application of Act to Scotland and Ireland.*

Application
of Act to
Scotland.

159. In the application of this Act to Scotland—

- (1) The expression "certified efficient school" means any public or other elementary school under Government inspection;
- (2) The expression "district council" and the expression "district" used with reference to such council mean the local authority under the Public Health (Scotland) Act, 1897, and their district;
- (3) The expression "medical officer of health" means the medical officer under the Public Health (Scotland) Act, 1897;
- (4) The expression "poor law medical officer" means the medical officer appointed by the parish council;
- (5) The expression "court of summary jurisdiction" means the sheriff of the county:

(*w*) Sect. 6.
(*x*) Sect. 7.
(*y*) Sect. 8.
(*z*) Sect. 9.
(*a*) Sect. 16.
(*b*) Sect. 17.

(*c*) Sect. 21.
(*d*) Sect. 74.
(*e*) Sect. 75.
(*f*) Sect. 128.
(*g*) Sect. 129.
(*h*) Sect. 130.

- (6) The expression "Board of Education" means the Scotch Education Department :
- (7) The provisions of this Act relating to certificates of proficiency or of due attendance shall not apply, but a child of the age of thirteen years, who has obtained exemption from the obligation to attend school in the manner prescribed by section three of the Education (Scotland) Act, 1901, shall be deemed to be a young person for the purposes of this Act :
- (8) The expression "county court" means the sheriff court :
- (9) All matters required by this Act to be published in the London Gazette shall, if they relate to Scotland, be published in the Edinburgh Gazette, either in addition or in substitution as the case may require :
- (10) The expression "information" means petition or complaint :
- (11) The expression "informant" means petitioner, pursuer, or complainer :
- (12) The expression "defendant" means defender or respondent :
- (13) The expression "clerk of the peace" means sheriff clerk :
- (14) The expression "owner" has the meaning given to it by section three of the Public Health (Scotland) Act, 1897 :
- (15) The expression "inspector of nuisances" means sanitary inspector within the meaning of the Public Health (Scotland) Act, 1897 :
- (16) The expression "Births and Deaths Registration Acts, 1836 to 1874," means the Acts relating to the registration of births, deaths, and marriages in Scotland :
- (17) The expression "Public Health Act, 1875," means the Public Health (Scotland) Act, 1897, and the Acts amending the same, and references to section ninety-one and sections one hundred and eighty-two to one hundred and eighty-six of the Public Health Act, 1875, shall be construed respectively as references to section sixteen and sections one hundred and eighty-three to one hundred and eighty-seven of the Public Health (Scotland) Act, 1897 :
- (18) The expenses incurred by a local authority under the provisions of this Act with respect to means of escape in case of fire shall be defrayed out of the public health general assessment levied under the Public Health (Scotland) Act, 1897 :
- (19) The expression "Local Government Board" means the Local Government Board for Scotland :
- (20) All offences under this Act shall be prosecuted and all penalties under this Act shall be recovered under the provisions of the Summary Jurisdiction (Scotland) Acts at the instance of the procurator fiscal or of any inspector :
- (21) The court may make, and may alter or vary, summary orders under this Act on petition by the procurator fiscal or an inspector presented in common form :
- (22) All fines under this Act in default of payment, and all orders made under this Act failing compliance, may be enforced by imprisonment for a term to be specified in the order or conviction, but not exceeding three months :

- (23) It shall be no objection to the competency of an inspector to give evidence as a witness in any prosecution for offences under this Act, that the prosecution is brought at the instance of that inspector :
- (24) Every person convicted of any offence under this Act shall be liable in the reasonable costs and charges of the conviction :
- (25) All penalties imposed and recovered under this Act shall be paid to the clerk of the court, and by him accounted for and paid to the King's and Lord Treasurer's Remembrancer on behalf of His Majesty's Exchequer, and shall be carried to the Consolidated Fund :
- (26) All jurisdictions, powers, and authorities necessary for the purposes of this section are conferred on the sheriffs :
- (27) The provisions of this Act with respect to appeals to quarter sessions shall not apply, and any person may appeal from any order or conviction under this Act to the Court of Justiciary, under and in terms of the Heritable Jurisdictions (Scotland) Act, 1746, or under any enactment amending that Act, or applying or incorporating its provisions or any of them with regard to appeals, or under and in terms of the Summary Prosecutions Appeal (Scotland) Act, 1875.

Application
of Act to
Ireland.

160. In the application of this Act to Ireland—

- (1) The expression “certified efficient school” means any national school, or any school recognised by the Lord Lieutenant and Privy Council as affording sufficient means of literary education for the purposes of this Act :
- (2) The expression “recognised efficient school” means a certified efficient school and any school which is recognised for the time being by an inspector under this Act as giving efficient elementary education :
- (3) In the provisions of this Act relating to certificates of birth the Irish Education Act, 1892, shall be substituted for the Elementary Education Act, 1876, and a school attendance committee shall be substituted for a local authority :
- (4) In the provisions of this Act relating to payment by occupiers of sums for schooling, the Irish Education Act, 1892, shall be substituted for the Elementary Education Act, 1891, and a school grant shall be substituted for a fee grant :
- (5) The expression “medical officer of health” includes a medical superintendent of health :
- (6) The expression “poor law medical officer” means the medical officer of a dispensary district :
- (7) Any act authorised to be done or consent required to be given by, or report required to be made to, the Board of Education under this Act shall be done and given by or to the Lord Lieutenant, acting by and with the advice of the Privy Council in Ireland :
- (8) A court of summary jurisdiction when hearing and determining an information or complaint in any matter arising under this Act shall be constituted within the police district of Dublin metropolis of one of the divisional justices of that district sitting at a police court within the district, and elsewhere of a resident magistrate appointed under the Constabulary (Ireland) Act, 1836, sitting alone, or with others, or of

two or more justices of the peace sitting in petty sessions at a place appointed for holding petty sessions :

- (9) Appeals from a court of summary jurisdiction shall lie in accordance with the provisions of the Summary Jurisdiction (Ireland) Acts :
- (10) All fines imposed under this Act shall, save as is otherwise expressly provided by this Act, be applied in the manner directed by the Fines Act (Ireland), 1851, and any Act amending the same :
- (11) The provisions of section one hundred and seven of the Public Health (Ireland) Act, 1878, with respect to a factory, workshop, or workplace, not kept in a cleanly state, or not ventilated, or overcrowded, shall not apply to any factory which is subject to the provisions of this Act with respect to cleanliness, ventilation, and overcrowding, but shall apply to every other factory, workshop, or workplace :
- (12) The Sanitary Acts within the meaning of the Public Health (Ireland) Act, 1878, shall apply to buildings in which persons are employed, whatever their number may be, in like manner as they apply to buildings where more than twenty persons are employed :
- (13) The Public Health (Ireland) Act, 1878, shall be substituted for the Public Health Act, 1875, and in particular sections two, one hundred and seven, and two hundred and nineteen to two hundred and twenty-three of the former Act shall be substituted for sections four, ninety-one, and one hundred and eighty-two to one hundred and eighty-six of the latter Act respectively : 41 & 42 Vict. c. 52.
- (14) The expression "the Local Government Board" means the Local Government Board for Ireland :
- (15) The expression "the Births and Deaths Registration Acts, 1836 to 1874," means the Births and Deaths Registration (Ireland) Acts, 1863 to 1880 :
- (16) All matters required by this Act to be published in the London Gazette shall, if they relate to Ireland, be published in the Dublin Gazette, either in addition or in substitution as the case may require.

(iii) *Repeal, &c.*

161. The Acts specified in the Seventh Schedule to this Act are hereby repealed as from the dates and to the extent in that schedule mentioned ;
 Provided that— Repeal of Acts.

- (1) All notices affixed in a factory or workshop in pursuance of any enactment hereby repealed shall, so far as they are in accordance with the provisions of this Act, be deemed to have been affixed in pursuance of this Act ; and
- (2) All orders and all special rules and requirements made or having effect under any enactment hereby repealed shall continue to have effect as if they had been made under this Act ; and nothing in this Act shall be construed as altering the mode of making such special rules or requirements whilst the power to make them continues in force ; and
- (3) All inspectors, sub-inspectors, certifying surgeons, officers, clerks, and servants, appointed in pursuance of any enactment hereby repealed shall continue in office and shall be subject to removal and

have the same powers and duties as if they had been appointed in pursuance of this Act; and

- (4) All certificates of fitness for employment granted in pursuance of any enactment hereby repealed shall have effect as if granted in pursuance of this Act, and all registers kept in pursuance of any enactment hereby repealed shall, until otherwise directed by the Secretary of State, be deemed to be the registers required by this Act.

See sect. 38 of the Interpretation Act, 1889.

Sub-sect. (2). See the notes prefixed to sect. 79, and following sect. 86, *supra*.

Commence-
ment of Act. **162.** This Act shall come into operation on the first day of January one thousand nine hundred and two.

Short title. **163.** This Act may be cited as the Factory and Workshop Act, 1901.

SCHEDULES.



Section 14.

FIRST SCHEDULE.

PROVISIONS AS TO ARBITRATIONS.

(1) The parties to the arbitration are in this schedule deemed to be the owner of the factory or workshop on the one hand and the district council on the other hand.

(2) Each of the parties to the arbitration may, within fourteen days after the date of the reference, appoint an arbitrator.

(3) No person shall act as arbitrator or umpire who is employed in, or in the management of, or is interested in, the factory or workshop to which the arbitration relates.

(4) The appointment of an arbitrator must be in writing, and notice of the appointment shall be forthwith sent to the other party to the arbitration, and the appointment shall not be revoked without the consent of that party.

(5) The death or removal of, or other change in, any of the parties to the arbitration shall not affect the proceedings under this schedule.

(6) If within the said fourteen days either of the parties fails to appoint an arbitrator, the arbitrator appointed by the other party may proceed to hear and determine the matter in difference, and in that case the award of the single arbitrator shall be final.

(7) If before an award has been made any arbitrator appointed by either party dies or becomes incapable to act, or for seven days refuses or neglects to act, the party by whom that arbitrator was appointed may appoint some other person to act in his place; and if he fails to do so within seven days after notice in writing from the other party for that purpose, the remaining arbitrator may proceed to hear and determine the matter in difference, and in that case the award of the single arbitrator shall be final.

(8) In either of the foregoing cases where an arbitrator is empowered to act singly, on one of the parties failing to appoint, the party so failing may, before the single arbitrator has actually proceeded in the arbitration, appoint an arbitrator, who shall then act as if no failure had occurred.

(9) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as has been appointed for that purpose by both arbitrators under their hands, the matter in difference shall be determined by the umpire appointed as herein-after mentioned.

(10) The arbitrators, before they enter on the matter referred to them, shall appoint by writing under their hands an umpire to decide on points on which they may differ.

(11) If the umpire dies or becomes incapable of acting before he has made his award, or refuses to make his award within a reasonable time after the matter has been brought within his cognizance, the persons or person who appointed such umpire shall forthwith appoint another umpire in his place.

(12) If the arbitrators refuse or fail, or for seven days after the request of either party neglect, to appoint an umpire, then on the application of either party an umpire may be appointed by the chairman of the quarter sessions within the jurisdiction of which the factory or workshop is situate.

(13) The decision of every umpire on the matters referred to him shall be final.

(14) If a single arbitrator fails to make his award within twenty-one days after the day on which he was appointed, the party who appointed him may appoint another arbitrator to act in his place.

(15) Arrangements shall, whenever practicable, be made for the matters in difference being heard at the same time before the arbitrators and the umpire.

(16) The arbitrators and the umpire, or any of them, may examine the parties and their witnesses on oath, and may also consult any counsel, engineer, or scientific person whom they think it expedient to consult.

(17) The payment, if any, to be made to any arbitrator or umpire for his services shall be fixed by the Secretary of State and together with the costs of the arbitration and award shall be paid by the parties or one of them, according as the award may direct. Such costs may be taxed by a master of the Supreme Court, or, in Scotland, by the auditor of the Court of Session, and the taxing officer shall, on the written application of either of the parties, ascertain and certify the proper amount thereof. The amount, if any, payable by the Secretary of State shall be paid as part of the expenses of inspectors under this Act. The amount, if any, payable by the occupier of the factory or workshop may in the event of non-payment be recovered in the same manner as fines under this Act.

This schedule [except paragraph (1)] is the same as Schedule I. of the Act of 1891. This latter schedule is still in force as regards "Special Rules" under sect. 8 of the Act of 1891. See notes before sect. 79 and after sect. 86, *supra*.

SECOND SCHEDULE.

Section 49.

FACTORIES AND WORKSHOPS IN WHICH OVERTIME IS ALLOWED.

(1) Non-textile factories and workshops and parts thereof where the material which is the subject of the manufacturing process or handicraft is liable to be spoiled by weather; namely,—

- (a) Flax scutch mills; and
- (b) Any factory or workshop or part thereof in which is carried on the making or finishing of bricks or tiles not being ornamental tiles; and
- (c) The part of rope works in which is carried on the open-air process; and
- (d) The part of bleaching and dyeing works in which is carried on open-air bleaching or Turkey red dyeing; and
- (e) Any factory or workshop or part thereof in which is carried on glue making; and

(2) Non-textile factories and workshops and parts thereof where press of work arises at certain recurring seasons of the year; namely,—

- (f) Letter-press printing works; and
- (g) Bookbinding works; and

any factory, workshop, or part thereof, in which is carried on the manufacturing process or handicraft of—

- (h) Lithographic printing; or
- (i) Machine ruling; or
- (k) Firewood cutting; or
- (l) Bon-bon and Christmas present making; or
- (m) Almanac making; or
- (n) Valentine making; or
- (o) Envelope making; or
- (p) Aërated water making; or
- (q) Playing card making; and

(3) Non-textile factories and workshops and parts thereof where the business is liable to sudden press of orders arising from unforeseen events; namely, any factory or workshop, or part thereof, in which is carried on the manufacturing process or handicraft of—

- (r) The making up of any article of wearing apparel; or
- (s) The making up of furniture hangings; or
- (t) Artificial flower making; or
- (u) Fancy box-making; or
- (v) Biscuit making; or
- (w) Job dyeing; and

(4) Any part of a factory (whether textile or non-textile) or workshop which is a warehouse not used for any manufacturing process or handicraft, and in which persons are solely employed in polishing, cleaning, wrapping, or packing up goods.

Paragraph (4).—The prohibition in this paragraph against overtime work being carried on in a part of a factory used for a manufacturing process or handicraft, extends to any part of the factory in which a manufacturing process or handicraft is carried on during the ordinary working hours, and does not merely prevent the overtime work being carried on in a part of the factory which is at the same time being used for a manufacturing process or handicraft: *Smith v. Sibray Hall & Co.*, [1903] 2 K. B. 707.

THIRD SCHEDULE.

REGULATIONS AS TO GRINDING IN TENEMENT FACTORY.

Section 88.

(1) Boards to fence the shafting and pulleys, locally known as drum boards, must be provided and kept in proper repair.

(2) Hand rails must be fixed over the drums and kept in proper repair.

(3) Belt guards, locally known as scotchmen, must be provided and kept in proper repair.

(4) Every floor constructed on or after the first day of January one thousand eight hundred and ninety-six must be so constructed and maintained as to facilitate the removal of slush, and all necessary shoots, pits, and other conveniences must be provided for facilitating such removal.

(5) Every grinding room or hull established on or after the first day of January one thousand eight hundred and ninety-six must be so constructed that for the purpose of light grinding there shall be a clear space of three feet at least between each pair of troughs, and for the purpose of heavy grinding there shall be a clear space of four feet at least between each pair of troughs and six feet at least in front of each trough.

(6) The sides of all drums in every grinding room or hull must be closely fenced.

(7) Except in pursuance of a special exemption granted by the Secretary of State, a grindstone must not be run before any fire-place or in front of another grindstone.

(8) A grindstone erected on or after the first day of January one thousand eight hundred and ninety-six must not be run before any door or other entrance.

Paragraph (7). See order dated October 25, 1897 (St. R. & O. Rev. 1904, Vol. IV., Factory and Workshop, p. 67).

FOURTH SCHEDULE.

COTTON CLOTH FACTORIES.

TABLE.

Maximum Limits of Humidity of the Atmosphere at given Temperatures.

I. Grains of Vapour per Cubic Foot of Air.	II. Dry Bulb Thermometer Readings. Degrees Fahrenheit.	III. Wet Bulb Thermometer Readings. Degrees Fahrenheit.	IV. Percentage of Humidity. Saturation = 100.
1.9	35	33	80
2.0	36	34	82
2.1	37	35	83
2.2	38	36	83
2.3	39	37	84
2.4	40	38	84
2.5	41	39	84
2.6	42	40	85
2.7	43	41	84
2.8	44	42	84
2.9	45	43	85
3.1	46	44	86
3.2	47	45	86
3.3	48	46	86
3.4	49	47	86
3.5	50	48	86
3.6	51	49	86
3.8	52	50	86
3.9	53	51	86
4.1	54	52	86
4.2	55	53	87
4.4	56	54	87
4.5	57	55	87
4.7	58	56	87
4.9	59	57	88
5.1	60	58	88
5.2	61	59	88
5.4	62	60	88
5.6	63	61	88
5.8	64	62	88

I. Grains of Vapour per Cubic Foot of Air.	II. Dry Bulb Thermometer Readings. Degrees Fahrenheit.	III. Wet Bulb Thermometer Readings. Degrees Fahrenheit.	IV. Percentage of Humidity. Saturation = 100.
6.0	65	63	88
6.2	66	64	88
6.4	67	65	88
6.6	68	66	88
6.9	69	67	88
7.1	70	68	88
7.1	71	68.5	85.5
7.1	72	69	84
7.4	73	70	84
7.4	74	70.5	81.5
7.65	75	71.5	81.5
7.7	76	72	79
8.0	77	73	79
8.0	78	73.5	77
8.25	79	74.5	77.5
8.55	80	75.5	77.5
8.6	81	76	76
8.65	82	76.5	74
8.85	83	77.5	74
8.9	84	78	72
9.2	85	79	72
9.5	86	80	72
9.55	87	80.5	71
9.9	88	81.5	71
10.25	89	82.5	71
10.3	90	83	69
10.35	91	83.5	68
10.7	92	84.5	68
11.0	93	85.5	68
11.1	94	86	66
11.5	95	87	66
11.8	96	88	66
11.9	97	88.5	65.5
12.0	98	89	64
12.3	99	90	64
12.7	100	91	64

FACTORY AND WORKSHOP ACT, 1901.

FORM OF RECORD.

Form for Recording the Readings of the Thermometers.

Name of Occupier .
Address of Factory .
Room { Number or Designation .
 Process carried on .
 Number of Operatives .
 Cubic contents cubic feet.

Date.	READINGS OF THERMOMETERS IN DEGREES FAHRENHEIT.						If no Artificial Humidity is produced in the 24 hours, insert in this column "None."
Year	Between 7 and 8 a.m.		Between 10 and 11 a.m.		Between 3 and 4 p.m.		
Month and Day.	Dry Bulb.	Wet Bulb.	Dry Bulb.	Wet Bulb.	Dry Bulb.	Wet Bulb.	
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
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16							
17							
18							
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20							
21							
22							
23							
24							
25							
26							
27							
28							
29							
30							
31							

(Signed) Occupier or Manager.

This form is new. See sect. 92, *supra*.

FIFTH SCHEDULE.

FEES OF CERTIFYING SURGEONS.

Section 124.

PART I.

Fees on Examination for Certificates of Fitness for Employment.

When the examination is at the factory or workshop.	{	2s. 6d. for each visit, and 6d. for each person after the first five examined at that visit; and also if the factory or workshop is more than one mile from the surgeon's residence, 6d. for each complete half mile over and above the mile.
When the examination is not at the factory or workshop, but at the residence of the surgeon, or at some place appointed by the surgeon for the purpose, and that place as well as the day and hour appointed for the purpose has been published in the prescribed manner.		6d. for each person examined.

PART II.

Fees on Examination by Direction of Secretary of State or in Pursuance of Regulations under this Act.

When the number of hands is under 10	-	-	2s. 6d. per visit.
" " " " 20	-	-	3s. "
" " " " 30	-	-	3s. 6d. "
" " " " 50	-	-	4s. "
" " " " 75	-	-	4s. 6d. "
" " " " 100	-	-	5s. "
" " " " over 100	-	-	7s. 6d. "

With the addition of 1s. for every mile or part of a mile in excess of one mile from the surgeon's residence.

SIXTH SCHEDULE.

LIST OF FACTORIES AND WORKSHOPS.

Sections 54,
149, 156.

PART I.

Non-Textile Factories.

(1) "Print works," that is to say, any premises in which any persons are employed to print figures, patterns, or designs upon any cotton, linen, woollen, worsted, or silken yarn, or upon any woven or felted fabric not being paper; "Print works."

- “ Bleaching and dyeing works.” (2) “ Bleaching and dyeing works,” that is to say, any premises in which the processes of bleaching, beetling, dyeing, calendaring, finishing, hooking, lapping, and making up and packing any yarn or cloth of any material, or the dressing or finishing of lace, or any one or more of such processes, or any process incidental thereto, are or is carried on ;
- “ Earthenware works.” (3) “ Earthenware works,” that is to say, any place in which persons work for hire in making or assisting in making, finishing, or assisting in finishing, earthenware or china of any description, except bricks and tiles not being ornamental tiles ;
- “ Lucifer-match works.” (4) “ Lucifer-match works,” that is to say, any place in which persons work for hire in making lucifer matches, or in mixing the chemical materials for making them, or in any process incidental to making lucifer matches, except the cutting of the wood ;
- “ Percussion-cap works.” (5) “ Percussion-cap works,” that is to say, any place in which persons work for hire in making percussion caps, or in mixing or storing the chemical materials for making them, or in any process incidental to making percussion caps ;
- “ Cartridge works.” (6) “ Cartridge works,” that is to say, any place in which persons work for hire in making cartridges, or in any process incidental to making cartridges, except the manufacture of the paper or other material that is used in making the cases of the cartridges ;
- “ Paper-staining works.” (7) “ Paper-staining works,” that is to say, any place in which persons work for hire in printing a pattern in colours upon sheets of paper, either by blocks applied by hand, or by rollers worked by steam, water, or other mechanical power ;
- “ Fustian-cutting works.” (8) “ Fustian-cutting works,” that is to say, any place in which persons work for hire in fustian cutting ;
- “ Blast furnaces.” (9) “ Blast furnaces,” that is to say, any blast furnace or other furnace or premises in or on which the process of smelting or otherwise obtaining any metal from the ores is carried on ;
- “ Copper mills.” (10) “ Copper mills ” ;
- “ Iron mills.” (11) “ Iron mills,” that is to say, any mill, forge, or other premises, in or on which any process is carried on for converting iron into malleable iron, steel, or tin plate, or for otherwise making or converting steel ;
- “ Foundries.” (12) “ Foundries,” that is to say, iron foundries, copper foundries, brass foundries, and other premises or places in which the process of founding or casting any metal is carried on ; except any premises or places in which such process is carried on by not more than five persons and as subsidiary to the repair or completion of some other work ;
- “ Metal and india-rubber works.” (13) “ Metal and india-rubber works,” that is to say, any premises in which steam, water, or other mechanical power is used for moving machinery employed in the manufacture of machinery, or in the manufacture of any article of metal not being machinery, or in the manufacture of india-rubber or gutta-percha, or of articles made wholly or partially of india-rubber or gutta-percha ;
- “ Paper mills.” (14) “ Paper mills,” that is to say, any premises in which the manufacture of paper is carried on ;
- “ Glass works.” (15) “ Glass works,” that is to say, any premises in which the manufacture of glass is carried on ;

- (16) "Tobacco factories," that is to say, any premises in which the manufacture of tobacco is carried on ; "Tobacco factories."
- (17) "Letter-press printing works," that is to say, any premises in which the process of letter-press printing is carried on ; "Letter-press printing works."
- (18) "Bookbinding works," that is to say, any premises in which the process of bookbinding is carried on ; "Bookbinding works."
- (19) "Flax scutch mills" ; "Flax scutch mills."
- (20) "Electrical stations," that is to say, any premises or that part of any premises in which electrical energy is generated or transformed for the purpose of supply by way of trade, or for the lighting of any street, public place, or public building, or of any hotel, or of any railway, mine, or other industrial undertaking. "Electrical stations."

Paragraph (20) is new.

PART II.

Non-Textile Factories and Workshops.

- (21) "Hat works," that is to say, any premises in which the manufacture of hats or any process incidental to their manufacture is carried on ; "Hat works."
- (22) "Rope works," that is to say, any premises being a ropery, ropewalk, or rope work, in which is carried on the laying or twisting or other process of preparing or finishing the lines, twines, cords, or ropes, and in which machinery moved by steam, water, or other mechanical power is not used for drawing or spinning the fibres of flax, hemp, jute, or tow, and which has no internal communication with any buildings or premises joining or forming part of a textile factory, except such communication as is necessary for the transmission of power ; "Rope works."
- (23) "Bakehouses," that is to say, any places in which are baked bread, biscuits, or confectionery from the baking or selling of which a profit is derived ; "Bakehouses."
- (24) "Lace warehouses," that is to say, any premises, room, or place not included in bleaching and dyeing works as herein-before defined, in which persons are employed upon any manufacturing process or handicraft in relation to lace, subsequent to the making of lace upon a lace machine moved by steam, water, or other mechanical power ; "Lace warehouses."
- (25) "Shipbuilding yards," that is to say, any premises in which any ships, boats, or vessels used in navigation, are made, finished, or repaired ; "Shipbuilding yards."
- (26) "Quarries," that is to say, any place not being a mine, in which persons work in getting slate, stone, coprolites or other minerals ; "Quarries."
- (27) "Pit-banks," that is to say, any place above ground adjacent to a shaft of a mine, in which place the employment of women is not regulated by the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, whether such place does or does not form part of the mine within the meaning of those Acts. "Pit-banks."
- (28) Dry cleaning, carpet beating, and bottle washing works. 50 & 51 Vict. c. 58.
35 & 36 Vict. c. 77.

Paragraph (28) is new.

- (29) Laundries carried on by way of trade or for the purpose of gain, or carried on as ancillary to another business or incidentally to the purposes of any public institution (*j*).

(*j*) Added by Factory and Workshop Act, 1907, s. 1.

SEVENTH SCHEDULE.

Section 161.

PART I.

ENACTMENTS REPEALED AS FROM THE COMMENCEMENT OF THIS ACT.

Session and Chapter.	Title of Act.	Extent of Repeal.
41 & 42 Vict. c. 16.	The Factory and Workshop Act, 1878.	The whole Act.
46 & 47 Vict. c. 53.	The Factory and Workshop Act, 1883.	The whole Act.
52 & 53 Vict. c. 62.	The Cotton Cloth Factories Act, 1889.	The whole Act.
54 & 55 Vict. c. 75.	The Factory and Workshop Act, 1891.	The whole Act except sections eight, nine, ten, and twelve, and the First Schedule.
58 & 59 Vict. c. 37.	The Factory and Workshop Act, 1895.	The whole Act except section twelve, sub-section three of section twenty-four, and section twenty-eight.
60 & 61 Vict. c. 58.	The Cotton Cloth Factories Act, 1897.	The whole Act.
63 & 64 Vict. c. 27.	The Railway Employment (Prevention of Accidents) Act, 1900.	In sub-section three of section thirteen the words "factory workshop or" wherever they occur, and the words "the occupier of the factory or workshop or."

PART II.

ENACTMENTS REPEALED FROM A DATE TO BE FIXED BY ORDER OF THE SECRETARY OF STATE (*k*).

Session and Chapter.	Short Title.	Extent of Repeal.
54 & 55 Vict. c. 75.	The Factory and Workshop Act, 1891.	Sections eight, nine, ten and twelve, and the First Schedule.
58 & 59 Vict. c. 37.	The Factory and Workshop Act, 1895.	Section twelve. Sub-section three of section twenty-four. Section twenty-eight.

(k) Not yet made.

SHOP HOURS ACT, 1892 (55 & 56 VICT. c. 62).

An Act to amend the Law relating to the Employment of Young Persons in Shops.

Whereas the health of many young persons employed in shops and warehouses is seriously injured by reason of the length of the period of employment:

Be it therefore enacted, &c. as follows:—

1. This Act may be cited as the Shop Hours Act, 1892.

2. [September 1, 1892.]

3.—(1) No young person (*a*) shall be employed in or about a shop (*a*) for a longer period than seventy-four hours, including meal times, in any one week.

(2) No young person (*a*) shall, to the knowledge of his employer, be employed in or about a shop (*a*) having been previously on the same day employed in any factory or workshop, as defined by the Factory and Workshop Act, 1878 (*b*), for the number of hours permitted by the said Act (*c*), or for a longer period than will, together with the time during which he has been so previously employed, complete such number of hours.

Sub-sect. (1). A newsagent, occupying a shop for the purposes of his business, employed a boy whose work was done partly inside the shop, and partly away from the shop in fetching newspapers and delivering them to the customers.—*Held*, that the whole employment was “in or about” the shop within the meaning of this Act: *Collman v. Roberts*, [1896] 1 Q. B. 457.

4. In every shop (*a*) in which a young person (*a*) is employed, a notice shall be kept exhibited by the employer in a conspicuous place referring to the provisions of this Act, and stating the number of hours in the week during which a young person may lawfully be employed in that shop.

Failure to exhibit this notice incurs a penalty not exceeding forty shillings; see sect. 1 of the Shop Hours Act, 1895, *infra*, which was passed to override the decision in *Hammond v. Pulsford*, [1895] 1 Q. B. 223.

A boy under eighteen years of age was employed by a firm of newsagents at their bookstall at Redhill railway station, in which the required notice was exhibited. From 6.30 a.m. to 10.15 a.m. the boy's duties took him to Merstham station, two miles off, where he delivered newspapers in the district and sold newspapers at the station from a temporary stall composed of a board laid across two trestles, whereon no notice under this Act was affixed.—*Held*, (1) that the temporary stall was not a “shop” within sects. 4 and 9 of this Act, and (2) that the boy was “employed” at Redhill station: *W. H. Smith & Son v. Kyle*, [1902] 1 K. B. 286.

5. Where any young person is employed in or about a shop contrary to the provisions of this Act, the employer shall be liable to a fine not exceeding one pound for each person so employed.

See the first note on sect. 4, *supra*.

6. Where the employer of any young person is charged with an offence against this Act, he shall be entitled upon information duly laid by him to

Short title.

Commence-
ment of Act.

Hours of
employment
in shops.

Notice of
hours to be
given.

Fine for
employing
persons
contrary to
the Act.

Power of
occupier to
exempt him-

(*a*) Defined in sect. 9.

p. 537, *supra*.

(*b*) Now Factory and Workshop Act,
1901 (1 Edw. 7, c. 22); see sect. 149, at

(*c*) See sects. 23—67 of 1 Edw. 7,
c. 22, at p. 481, *supra*.

self from
fine, on
conviction
of actual
offender.

have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the said employer proves to the satisfaction of the court that he has used due diligence to enforce the execution of the Act, and that the said other person has committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the occupier shall be exempt from any fine.

Summary
proceedings.

7. All offences under this Act shall be prosecuted, and all fines under this Act shall be recovered, in like manner as offences and fines are prosecuted and recovered under the Factory and Workshop Act, 1878, and sections eighty-eight, eighty-nine, ninety and ninety-one of the said Act, and so much of section ninety-two thereof as relates to evidence respecting the age of any person, and the provisions of the said Act relating to Scotland and Ireland, so far as those provisions are applicable, shall have effect as if re-enacted in this Act and in terms made applicable thereto.

See now sects. 144—147, and sects. 159 and 160 of 1 Edw. 7, c. 22, *supra*.

Appointment
of inspectors.

8. The council of any county or borough, and in the city of London the common council, may appoint such inspectors as they may think necessary for the execution of this Act within the areas of their respective jurisdictions, and sections sixty-eight and seventy of the Factory and Workshop Act, 1878, shall apply in the case of any such inspector as if he were appointed under that Act, and as if the expression workshop as used in those sections included any shop within the meaning of this Act.

The powers conferred by this section may be exercised in Ireland by the council of any municipal borough and by the commissioners of any town or township.

See now sects. 119 and 121 of 1 Edw. 7, c. 22, *supra*.

As to salaries and expenses, see sect. 2 of Shop Hours Act, 1893, *infra*.

As to Scotland, see sect. 3 of the last-mentioned Act.

Interpreta-
tion.

9. In this Act, unless the context otherwise requires—

“Shop” means retail and wholesale shops, markets, stalls and warehouses in which assistants are employed for hire, and includes licensed public-houses and refreshment houses of any kind:

“Young person” means a person under the age of eighteen years:

Other words and expressions have the same meanings respectively as in the Factory and Workshop Act, 1878 (*d*).

“Shop”: see note on *Smith v. Kyle*, under sect. 4, *supra*.

A building which is used solely as a hotel and restaurant for the accommodation of guests, and which has no bar or counter for the sale of intoxicating liquors, and is not in the ordinary sense of the term a public-house, but which is licensed as an inn under 9 Geo. 4, c. 61, for the sale of intoxicating liquors by retail, is a “shop” within the meaning of this Act: *Savoy Hotel Co. v. London County Council*, [1900] 1 Q. B. 665.

Exemption of
members of
the same

10. Nothing in this Act shall apply to a shop when the only persons employed are members of the same family dwelling in the building of which

(*d*) See now sect. 156 of 1 Edw. 7, c. 22, *supra*.

the shop forms part, or to which the shop is attached, or to members of the family and employer's family so dwelling, or to any person wholly employed as a servants, domestic servant.

A page-boy in a hotel, who sleeps on the premises, and who is principally employed as a messenger, but partly also in assisting to dust the reception-rooms, is not within the exemption in this section in favour of "any person wholly employed as a domestic servant": *Savoy Hotel Co. v. London County Council, ibi supra.*

AN ACT TO AMEND THE SHOP HOURS ACT, 1892

(56 & 57 VICT. c. 67) (1893).

1. This Act may be cited as the Shop Hours Act, 1893, and this Act and Short title. the Shop Hours Act, 1892, may be cited together as the Shop Hours Acts, 1892 and 1893.

2.—(1) Any salaries payable or other expenses incurred by the council Salaries and of a county or a borough for the purposes of the Shop Hours Act, 1892, shall expenses. be defrayed by the council of a county out of the county fund, and by the council of a borough out of the borough fund or borough rate.

(2) In Ireland such salaries and expenses shall be defrayed, if payable or incurred by the council of a municipal borough out of the borough fund or borough rate, and, if payable or incurred by the commissioners of a town or township, out of any rate leviable by them as such commissioners throughout the whole of their district.

3. In the application to Scotland of the Shop Hours Act, 1892, and of this Definitions. Act,—

The expression "council of a county or a borough" means the county council of a county, and the commissioners of police of burghs in which there are such commissioners, and, in burghs in which there are no such commissioners, the town council.

The expressions "county fund" shall mean the general purposes rate, and "borough fund or borough rate" shall mean in burghs in which there are commissioners of police, the police assessment, or in their option the public health assessment; and in burghs in which there are no such commissioners, any assessment levied by the town council.

SHOP HOURS ACT, 1895 (58 VICT. c. 5).

An Act to amend the Shop Hours Act, 1892.

1. If any employer fails to keep exhibited the notice required by section Penalty on four of the Shop Hours Act, 1892, in manner required by that section, he failure to shall be liable to a fine not exceeding forty shillings. comply with 55 & 56 Vict. c. 62, s. 4.

See note on sect. 4 of the Shop Hours Act, 1892, *supra*.

2. This Act may be cited as the Shop Hours Act, 1895, and shall be Short title construed as part of the Shop Hours Act, 1892, and the Shop Hours Acts, 1892 and 1893, and this Act may be cited collectively as the Shop Hours and construction. Acts, 1892 to 1895.

SEATS FOR SHOP ASSISTANTS ACT, 1899 (62 & 63 VICT. c. 21).

Seats to be provided in shops, &c.

1. In all rooms of a shop (*e*), or other premises where goods are actually retailed to the public, and where female assistants are employed for the retailing of goods to the public, the employer carrying on business in such premises shall provide seats behind the counter, or in such other position as may be suitable for the purpose, and such seats shall be in the proportion of not less than one seat to every three female assistants employed in each room.

Penalty.

2. Any person failing to comply with the provisions of this Act shall be liable, on summary conviction, for a first offence to a fine not exceeding three pounds, and for a second or subsequent offence to a fine not less than one pound and not exceeding five pounds.

See sect. 7 of Shop Hours Act, 1892, *supra*, and the note there.

Commencement of Act.
Construction and short title.

3. [Act to come into force January 1, 1900.]

4. This Act shall be read and construed as one with the Shop Hours Acts, 1892 to 1895, and may be cited separately as the Seats for Shop Assistants Act, 1899.

See sect. 10 of the Shop Hours Act, 1904, *infra*.

SHOP HOURS ACT, 1904 (4 EDW. 7, c. 31).

An Act to provide for the Early Closing of Shops.

Closing order.

1. An order (in this Act referred to as "a closing order") made by a local authority (*f*), and confirmed by the central authority, in manner provided by this Act, may fix the hours on the several days of the week (*g*) at which, either throughout the area of the local authority or in any specified part thereof, all shops (*f*) or shops of any specified class are to be closed for serving customers.

An order closing all classes of shops of a particular trade for part of one day in the week is not *ultra vires*: *Att.-Gen. v. Mayor, &c. of Brighton*, (C. A.) Times Newspaper, May 22, 1907.

Contents and effect of order.

2.—(1) The hour fixed by a closing order (in this Act referred to as "the closing hour") shall not be earlier than seven o'clock in the evening on any day of the week, except that on one specified day in the week it may be an hour not earlier than one o'clock in the afternoon.

(2) A closing order may prohibit, either absolutely or subject to such exemptions and conditions as may be contained in the order, the carrying on of any retail trade after the closing hour in any place, not being a shop, within the area to which the order applies, for the carrying on of which it would be unlawful to keep a shop open after that hour.

(3) The order may—

(a) define the shops and trades to which the order applies; and

(*e*) Defined in sect. 9 of Shop Hours Act, 1892.

(*g*) Having regard to the provisions of the Sunday Observance Act, 1677, Sunday, it is submitted, does not come within this Act.

(*f*) Defined in sect. 8, *infra*.

(b) authorise sales after the closing hour in cases of emergency and in such other circumstances as may be specified or indicated in the order; and

(c) contain any incidental, supplemental, or consequential provisions which may appear necessary or proper.

(4) Nothing in a closing order shall apply to any fair lawfully held or a bazaar for charitable purposes, nor to any shop where the only trade or business carried on is one or more of the trades or businesses mentioned in the Schedule to this Act.

(5) Where several trades and businesses are carried on in the same shop and any of those trades or businesses are of such a nature that if they were the only trades or businesses carried on in the shop the closing order would not apply to the shop, the shop may be kept open after the closing hour for the purposes of those trades and businesses alone, but on such terms and under such conditions as may be specified in the order :

Provided that the terms and conditions as respects post office business shall be subject to the approval of the Postmaster-General.

3.—(1) Whenever a local authority (*h*) are satisfied that a *prima facie* case is made out for making a closing order, the authority shall give public notice in the prescribed (*i*) manner and in the prescribed (*i*) form of their intention to make an order, specifying therein a period (not being less than the prescribed period) within which objections may be made to the making of the proposed order, and, if after taking into consideration any objections they may have received the local authority are satisfied that it is expedient to make the order and that the occupiers of at least two-thirds in number of the shops to be affected by the order approve the order, they may make the order.

Procedure
for making
orders.

(2) Notice of the provisions of the order shall be given, and copies thereof shall be supplied in the prescribed manner, and the order shall be submitted to the central authority (*h*), and the central authority shall consider any objections to the order, and may either disallow the order or confirm the order with or without amendment.

Quere, whether the High Court can entertain objections to an order made under this section : *Att.-Gen. v. Mayor of Brighton* : see sect. 1, *supra*.

(3) As soon as the central authority have confirmed any order, the order shall become final and have the effect of an Act of Parliament :

Provided that every closing order shall be laid before each House of Parliament as soon as may be after it is confirmed, and, if an address is presented to His Majesty by either House within the next subsequent forty days on which that House has sat after any such order is laid before it praying that the order may be cancelled, His Majesty in Council may annul the order, and any order so annulled shall thenceforth become void and of no effect, but without prejudice to any proceedings which may in the meantime have been taken under the order and without prejudice to the power of making any new closing order.

4. The central authority (*h*) may at any time on the application of the local authority revoke a closing order either absolutely or so far as it affects

Revocation
of order.

(*h*) Defined in sect. 8, *infra*.

(*i*) See sect. 7 (a), *infra*.

any particular class of shops, and, if at any time it is made to appear to the satisfaction of the local authority that the occupiers of a majority of any class of shops to which a closing order applies are opposed to the continuance of the order, the local authority shall apply to the central authority to revoke the order in so far as it affects that class of shops, but any such revocation shall be without prejudice to the making of any new closing order.

Penalties for offences.

5. If any person contravenes the provisions of a closing order he shall be liable, on conviction under the Summary Jurisdiction Acts, to a fine not exceeding in the case of a first offence one pound, in the case of a second offence five pounds, and in the case of a third or subsequent offence twenty pounds :

Provided that nothing in this Act or in any order shall render a person liable to any penalty for serving after the closing hour any customer who was in the shop before the closing hour.

No appeal from a conviction to quarter sessions is given, but there is of course the right for either party to take a case to the High Court on a point of law under the Summary Jurisdiction Act, 1857.

Local inquiries.

6. The central authority (*i*) may for the purposes of any of their powers and duties under this Act cause a local inquiry to be held, and the costs incurred in relation to any such inquiry, including the salary of any officer engaged in the inquiry, not exceeding three guineas a day, shall be paid by the local authority concerned, and the central authority may certify the amount of the costs incurred. Any sums so certified shall be a debt to the Crown from the local authority.

Regulations.

7. The central authority may make regulations—

- (a) for prescribing anything which under this Act is to be prescribed; and
- (b) as to the mode of ascertaining the opinion of occupiers of shops; and
- (c) as to conduct of local inquiries and matters incidental thereto; and
- (d) as to the procedure for obtaining the revocation of a closing order; and
- (e) generally for carrying into effect the provisions of this Act.

The Secretary of State has made a set of regulations under this section, dated February 13, 1905: St. R. & O. 1905, No. 96.

Definitions.

8.—(1) In this Act the expression “local authority” in London outside the city means a metropolitan borough council, and elsewhere means the council of an urban district with a population according to the census of one thousand nine hundred and one of over twenty thousand, and any council or other authority having power to appoint inspectors under the Shop Hours Acts, 1892 to 1895, and the provisions of those Acts relating to offences and proceedings, the appointment, powers and salaries of inspectors, and the expenses of local authorities, shall apply as if they were herein re-enacted and in terms made applicable to this Act, and as if references to the occupier of a shop were substituted for references to the employer of a young person.

(i) Defined in sect. 8, *infra*.

(2) Any expenses incurred by a metropolitan borough council under this Act shall be defrayed as part of the expenses of the council, and the expenses of an urban district council shall be defrayed as part of the general expenses incurred in the execution of the Public Health Acts (*k*).

(3) In this Act, unless the context otherwise requires—

The expression “shop” includes any premises or place where retail trade (including the business of a barber) is carried on :

The expression “central authority” means in England a Secretary of State, in Scotland the Secretary for Scotland, and in Ireland the Lord Lieutenant.

A “barber” would seem to have been expressly mentioned, because of the decision in *Palmer v. Snow*, [1900] 1 Q. B. 725, regarding that occupation in respect of the Sunday Observance Act, 1677.

9. Where an order under this Act is in force in any metropolitan borough or urban district, the council of the county in which the borough or district is situate may delegate to the council of the borough or district, either with or without any restrictions or conditions as they think fit, their powers under the Shop Hours Acts, 1892 to 1895.

10. This Act may be cited as the Shop Hours Act, 1904, and the Shop Hours Acts, 1892 to 1895, and the Seats for Shop Assistants Act, 1899, and this Act, may be cited together as the Shops Regulation Acts, 1892 to 1904.

Power of county councils to delegate powers under the Shop Hours Acts, 1892 to 1895.
Short title.

SCHEDULE.

Section 2.

Post Office business.

The sale of medicines and medical and surgical appliances.

The sale by retail of intoxicating liquors for consumption on or off the premises.

The sale of refreshments for consumption on the premises.

The sale of tobacco and other smokers' requisites.

The sale of newspapers.

The business carried on at a railway bookstall or at a railway refreshment room.

SHOP CLUBS ACT, 1902 (2 EDW. 7, c. 21).

An Act to prohibit compulsory Membership of Unregistered Shop Clubs or Thrift Funds, and to regulate such as are duly registered.

1. It shall be an offence under this Act if an employer shall make it a condition of employment—

(a) That any workman (*l*) shall discontinue his membership of any friendly society ; or

Membership of friendly society, &c. not to be condition of employment.

(*k*) See Public Health Act, 1875, s. 209.

(*l*) Not defined.

- (b) That any workman shall not become a member of any friendly society other than the shop club or thrift fund.

Employer
not to require
workman to
join shop
club, &c.
59 & 60 Vict.
c. 25.

2. It shall be an offence under this Act if an employer shall make it a condition of employment that any workman shall join a shop club or thrift fund, unless the shop club or thrift fund is registered under the Friendly Societies Act, 1896, subject to the provisions of this Act, and certified under this Act by the Registrar of Friendly Societies.

No shop club or thrift fund shall be so certified unless the Registrar of Friendly Societies is satisfied—

- (a) That the shop club or thrift fund is one that affords to the workman benefits of a substantial kind in the form of contributions or benefits at the cost of the employer in addition to those provided by the contributions of the workman.
- (b) That the shop club or thrift fund is of a permanent character, and is not a society that annually or periodically divides its funds, and that no member of such shop club or thrift fund shall, except in accordance with the provisions of section six of this Act, be required to cease his membership in such shop club or thrift fund upon leaving the firm with which such club or fund is connected.

Before so certifying any shop club or thrift fund, the Registrar shall take steps to ascertain the views of the workmen, and shall be satisfied that at least seventy-five per cent. of the workmen desire the establishment of such shop club or thrift fund, and further shall consider any objections that they may make to the certification.

Regulations.

3. The regulations contained in the Schedule of this Act shall apply to any shop club or thrift fund certified under this Act.

Penalty.

4. Every person who commits an offence within the meaning of this Act shall be liable on summary conviction to a fine not exceeding five pounds, and, in the case of a second or subsequent conviction within one year of a previous conviction, to a fine not exceeding twenty pounds:

Provided that, where an offence is committed in respect of several persons at the same time, the offender shall not be convicted of more than one offence.

Exemption of
railways.

5. Nothing in this Act shall prohibit compulsory membership of any superannuation fund, insurance, or other society, already existing for the benefit of the persons employed by any railway company, to the funds of which such company contributes.

Compensa-
tion to
workman
ceasing to be
member of
shop club.

6. In any case where a workman, by the conditions of his employment, is a member of a shop club, he shall, upon his dismissal from, or upon leaving, his employment, unless contrary to the rules of the club, have the option of remaining a member or of having returned to him the amount of his share of the funds of the club, to be ascertained by actuarial calculation: Provided that every such member who shall exercise the option to remain a member of the club shall not, so long as he remains out of such employment, be entitled to take any part in the management of the club, or to vote in respect thereof.

Definitions.

7. In this Act—

The term “friendly society” means a friendly society registered under the Friendly Societies Act, 1896, and includes a registered branch, and

in application to Scotland and Ireland the word "registrar" means the registrar as defined in that Act :

The expression "shop club" or "thrift fund" means every club and society for providing benefits to workmen in connection with a work-shop, factory, dock, shop, or warehouse.

8. This Act shall come into operation on the first day of January one thousand nine hundred and three. Date of Act.

9. This Act may be cited as the Shop Clubs Act, 1902.

SCHEDULE.

REGULATIONS AS TO CERTIFICATION UNDER THIS ACT.

The rules of a shop club or thrift fund (herein-after termed "the society") shall provide for the following matters :— Section 3.

- (i) The name and place of office of the society.
- (ii) The whole of the objects for which the society is to be established, the purposes for which the funds thereof shall be applicable, the terms of admission of members, the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member, and the consequences of non-payment of any subscription or fine.
- (iii) The mode of holding meetings and right of voting, and the manner of making, altering, and rescinding rules.
- (iv) The appointment and removal of a committee of management (by whatever name), of a treasurer and other officers, and of trustees.
- (v) The investment of the funds, the keeping of the accounts, and the audit of the same once a year at least.
- (vi) Annual returns to the registrar of the receipts, funds, effects, and expenditure, and numbers of members of the society.
- (vii) The inspection of the books of the society by every person having an interest in the funds of the society.
- (viii) The manner in which disputes shall be settled.
- (ix) The keeping separate accounts of all moneys received or paid on account of every particular fund or benefit assured for which a separate table of contributions payable shall have been adopted, and the keeping separate account of the expenses of management, and of all contributions on account thereof.
- (x) A valuation once at least in every five years of the assets and liabilities of the society, including the estimated risks and contributions.
- (xi) The voluntary dissolution of the society by consent of not less than five-sixths in value of the persons contributing to the funds of the society, and of every person for the time being entitled to any benefit from the funds of the society, unless his claim be first satisfied or adequately provided for.

This was a private bill. See the remarks of Sir Edward Brabrook, late Chief Registrar of Friendly Societies, on its provisions in Chitty's Statutes (Annual), 1902, p. 152.

THE RAILWAY EMPLOYMENT (PREVENTION OF ACCIDENTS) ACT, 1900 (63 & 64 VICT. c. 27).

An Act for the better Prevention of Accidents on Railways.

Power to
make rules
as to
dangerous
railway
operations.

1.—(1) The Board of Trade may, subject to the provisions of this Act, make such rules as they think fit with respect to any of the subjects mentioned in the schedule to this Act, with the object of reducing or removing the dangers and risks incidental to railway service.

(2) Where the Board of Trade consider that avoidable danger to persons employed on any railway arises from any operation of railway service (not being a matter in respect to which rules may be made under the foregoing provisions of the section), whether that danger arises from anything done or omitted to be done by the railway company or any of its officers or servants, or from any want of proper appliances or plant, they may, subject to the provisions of this Act, after communicating with the railway company, and giving them a reasonable opportunity of reducing or removing the danger or risk, make rules for that purpose.

(3) The Board of Trade may, by any rules made under this section, require amongst other matters the use of any plant or appliance which has been shown to the satisfaction of the Board of Trade to be calculated to reduce danger to persons employed on a railway, or the disuse of any plant or appliance which has been similarly shown to involve such danger.

(4) The Board of Trade shall, by any rule made by them under this section, give a reasonable time for carrying out the requirements of the rule.

The Board of Trade has made rules under this section. See St. R. & O. Rev. 1904, Vol. XI., "Railway," p. 9 (1902, No. 616).

Sects. 2—10 inclusive deal with the procedure to be followed in making the rules and hearing objections to them, or applications to rescind or vary them.

Penalties.

11.—(1) If any railway company or other company or person acts in contravention of, or fails to comply with, any rule under this Act, then—

(a) the company or person shall be liable for each offence on conviction under the Summary Jurisdiction Acts to a fine not exceeding fifty pounds, or in the case of a continuing offence to a fine not exceeding ten pounds for every day during which the offence continues after conviction; or

(b) on the application of the Board of Trade, compliance with the rule may be enforced by the Railway and Canal Commissioners as if the rule were an order made by those Commissioners in the exercise of their statutory jurisdiction.

(2) A summary conviction for an offence under this section shall be subject to an appeal to a court of quarter sessions in manner provided by the Summary Jurisdiction Acts.

Under sect. 12 the Railway and Canal Commissioners are to make rules regulating the consideration by them of objections to the rules referred to them under sects. 3 and 10 by the Board of Trade. Such rules have been made. See St. R. & O. Rev. 1904, Vol. XI., "Railway," p. 8 (1902, No. ³⁵¹/_{4.5}).

13.—(1) The powers of the Board of Trade for the inspection of railways shall include power to inspect any railway for the purpose of ascertaining whether there is any ground for proceeding under this Act, or whether there has been any contravention of or default in compliance with any rule made under this Act. Inspection and notices of accidents.

(2) The duty of a railway company to give notice of accidents shall apply to accidents attended with loss of life or personal injury to any person in the employment of the company on any line, or siding having a junction with the railway of the railway company, but not belonging to or in the occupation of any railway company, in like manner as it applies to such accidents when occurring on the railway of the company, and the provisions relating to the notice of such accidents shall have effect accordingly.

As to notice of accidents to Board of Trade, see Regulation of Railways Act, 1871, s. 6, and the rules made under that section: St. R. & O. 1906, "Railway," p. 569 (dated Dec. 21, 1906).

(3) This sub-section, which dealt with notice of accidents on lines and sidings used in connection with factories, workshops and mines, was repealed in part by the Factory and Workshop Act, 1901 (sect. 161), and wholly by the Notice of Accidents Act, 1906: see sects. 3 and 7 of the last-named Act, printed at p. 859, *infra*; and also sects. 19 and 106 of the Factory and Workshop Act, 1901, *supra*.

14 empowers the railway company to issue debenture stock to meet expenses incurred under this Act.

15 deals with inquiries and experiments by the Board of Trade.

16. In this Act—

The expression "railway" means any railway used for the purposes of public traffic whether passenger, goods, or other traffic, and includes any works of the railway company connected with the railway; and Definition of "railway" and "railway company."
The expression "railway company" includes a company or person working a railway under lease or otherwise.

17. A railway company who are lessees shall not be liable for any breaches of the lease necessarily committed in complying with rules under this Act.

18. No double notices or inspections required.

19. Application to Scotland and Ireland.

20. This Act may be cited as the Railway Employment (Prevention of Short title. Accidents) Act, 1900.

SCHEDULE.

- (1) Brake levers on both sides of waggons.
- (2) Labelling waggons.
- (3) Movement of waggons by propping and tow roping.
- (4) Steam or other power brakes on engines.
- (5) Lighting of stations or sidings where shunting operations are frequently carried on after dark.

(6) Protection of point rods and signal wires, and position of ground levers working points.

(7) Position of offices and cabins near working lines.

(8) Marking of fouling points.

(9) Construction and protection of gauge glasses.

(10) Arrangement of tool boxes and water gauges on engines.

(11) Working of trains without brake vans upon running lines beyond the limits of stations.

(12) Protection to permanent way men when relaying or repairing permanent way.

CHAPTER XII.

TRADE UNIONS.

THE existing legislation relating to this subject is contained in the Trade Union Act, 1871 (34 & 35 Vict. c. 31), the Trade Union Act Amendment Act, 1876 (39 & 40 Vict. c. 22), the Trade Union (Provident Funds) Act, 1893 (56 & 57 Vict. c. 2), the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86) (*a*), and the Trade Disputes Act, 1906 (6 Edw. 7, c. 47) (*b*).

There are *dicta* to the effect that a combination to raise wages, *i.e.*, a strike, is indictable at Common Law, as being a conspiracy in restraint of trade (*c*). The remarks to that effect made by Crompton, J., in *Hilton v. Eckersley* (*d*) have been expressly overruled by the House of Lords in *Mogul Steamship Co. v. McGregor* (*e*), the facts of which case were these: The plaintiffs, shipowners, alleged that there was a conspiracy on the part of the defendants, who were shipowners also, to prevent the plaintiffs getting cargoes for their steamers; that in pursuance of this combination the defendants "bribed, coerced and induced" shippers not to ship by the plaintiffs' steamers. Special damage to an individual resulting from an indictable conspiracy, it was said, gave a right of

(*a*) For the history of the statute law on this subject see Stephen's *History of Criminal Law* (ed. 1883), pp. 203—217.

(*b*) This Act effects very great changes in the law, which are dealt with at p. 606, *infra*.

(*c*) *Rex v. Journeymen Tailors of Cambridge* (1721), 8 Mod. 10, *per Cur.*; *Rex v. Markey* (1796), 6 T. R. 619, *per Grose, J.*, at p. 636. The *dicta* in both these cases were unnecessary for the decision, and that in the former case is not justified by the reference (*Starling's Case*, 1 Sid. 174 given it; besides, later criticism has discredited them. See Sir W. Erle's *Memorandum on Trade Unions*, p. 41; Wright on *Criminal Conspiracy*, pp. 52, 53; Stephen's *Hist. Crim. Law* (ed. 1883), vol. iii. pp. 219, 220, 223.

(*d*) (1855), 6 E. & B. 47, 53. This opinion, repeated by him in *Walsby v. Anley* (1861), 3 E. & E. at p. 520, was dissented from by Campbell, C. J., in that case (*l. c.* at p. 62); and in the Exchequer Chamber (*l. c.* at p. 75) the Court expressly reserved their opinion on this point, as did the judges in *Hornby v. Close* (1867), L. R. 2 Q. B. 153. And see *Reg. v. Staines* (1870), 1 C. C. R. 230, and the judgment of Lindley, J. (at p. 260), in *Swaine v. Wilson* (1889), 24 Q. B. D. 250.

(*e*) (1892), A. C. 25, *per Lord Halsbury*, at p. 39; *per Lord Watson*, at p. 42; *per Lord Bramwell*, at p. 46; *per Lord Hatten*, at p. 58. The argument that "public policy" is the test of the criminality of an agreement was also disapproved of.

action to the person damaged against the conspirators; that this was a conspiracy in restraint of trade, and, as such, was illegal and indictable at Common Law; and special damage had resulted to the plaintiffs. The House of Lords dissented from this argument. An indictable conspiracy must be unlawful as to the end or means employed; an agreement is not unlawful in this sense because it is in restraint of trade (*f*). As to "trade disputes," the Trade Union Act, 1871 (*g*), has expressly enacted that "the purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise."

"Restraint of trade" is not the test of criminal conspiracy. What, then, is the true test? A combination with crime for its object or employing crime as its means is a criminal conspiracy (*h*), whether the crime is a Common Law or a statutory offence (*i*); and the legislature has declared this to be the case in regard to trade disputes (*k*). The books contain many examples of indictments and convictions of this character, many of them relating to offences under 6 Geo. IV. c. 129 (*l*), and committed by workmen on strike. There are also cases of combination against the Government and order, public morals and decency (*m*), and cases not really of conspiracy, "where," in Sir William Erle's words, "simultaneity is the essence of the criminality of the act," *e.g.*,

(*f*) See the remarks of Hannen, J., in *Farrer v. Close* (1869), L. R. 4 Q. B. 602, 613, and in the *Mogul Case*, [1892] A. C., of Lord Watson, at p. 42, and Lord Bramwell, at p. 45. "Contracts, as they are called, in restraint of trade are not in my opinion illegal in any sense except that the law will not enforce them. It does not prohibit the making of such contracts; it merely declines, after they have been made, to recognise their validity": per Bowen, L. J., in *Mogul Case* (C. A.), 23 Q. B. D. at p. 619.

(*g*) Sect. 2. See the definition of "trade dispute" in sect. 5 of Trade Disputes Act, 1906.

(*h*) *Reg. v. Parwell* (1881), 14 Cox, C. C. 508. See Wright on Conspiracy, pp. 26, 27.

(*i*) "In numerous cases violations of statutes relating to labour have been punished by way of indictment for conspiracy, but it does not appear that in any other case, except perhaps in cases under the Revenue Acts, persons have been indicted for combining to violate

the provisions of a statute, for the breach of which the statute prescribes only a summary punishment": Wright on Conspiracy, p. 27; and see pp. 83, 85, *ibid*.

(*k*) 38 & 39 Vict. c. 86, s. 3. "A crime for the purpose of this section" (*i.e.*, of making a combination in furtherance of trade disputes indictable) "means an offence punishable on indictment or an offence which is punishable on summary conviction."

(*l*) *E.g.*, *R. v. Bykerdyke* (1832), 1 M. & Rob. 179; *R. v. Ball* (1834), 6 C. & P. 563 (37 Geo. III. c. 123); *R. v. Rowlands* (1851), 17 Q. B. 671; *Walsby v. Anley* (1861), 3 E. & E. 516; *O'Neill v. Longman* (1863), 4 B. & S. 376; *O'Neill v. Kruger* (1863), 4 B. & S. 389; *Wood v. Bowron* (1866), 10 Cox, C. C. 344; *Skinner v. Kitch* (1867), 10 Cox, C. C. 493; *R. v. Drutt* (1867), 10 Cox, C. C. 592.

(*m*) See Wright on Conspiracy, pp. 28—33.

unlawful assembly and obstruction of a highway by a crowd. The late Mr. Justice Wright was disinclined to recognise any other cases of criminal conspiracy beyond those mentioned, with the exception of combination to defraud (*u*). The editor of Roscoe's Evidence in Criminal Cases (*o*) suggests that the words of Cockburn, C. J., in *R. v. Warburton* (*p*)—a case of conspiracy for the purposes of fraud and false pretences, not in themselves criminal—should be confined to “one class of civil wrongs,” namely, “civil wrong by fraud and false pretences.” But some definitions of criminal conspiracy go far beyond these limits. For example: “A conspiracy consists in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means” (*q*)—words which would include all civil wrongs as means or end. It is clear, however, that not every combination of which a civil wrong is the end or means is indictable. The judgment of Lord Ellenborough in *R. v. Turner* (*r*), where a conspiracy to commit civil trespass was held insufficient to support an indictment, indicates the essential element, viz., the interest of the public in the wrong. Sir William Erle (*s*) says, “There seems also to be authority for saying that a combination to violate a private right, *in which the public has a sufficient interest*, is a crime, such a violation being an actionable wrong” (*t*). The case of *Reg. v. Parnell and others* is an instance of such a conspiracy. There the defendants were indicted for a conspiracy to prevent tenants paying their rent (*u*).

(*u*) Wright on *Conspiracy*, pp. 10, 11, 37—43, 85—88.

(*o*) 11th ed. p. 400.

(*p*) (1870), L. R. 1 C. C. R. 274, 276.

“It is not necessary in order to constitute a conspiracy that the acts agreed to be done should be acts which, if done, would be criminal. It is enough if the acts agreed to be done, although not criminal, are wrongful, *i. e.*, amount to a civil wrong.”

(*q*) Per Willes, J., in *Muleahy v. Reg.* (1868), L. R. 3 H. L. 306, 317; Tindal, C. J., in *O'Connell's Case* (1844), 11 Cl. & F. 155, 233; Denman, C. J., in *Jones' Case* (1832), 4 B. & Ad. 345, 349.

(*r*) (1811), 13 East, at p. 231. Lord Campbell's criticism of this decision in *Reg. v. Rowlands* (1851), 17 Q. B. at p. 686, does not affect it for the present purpose.

(*s*) *Memorandum on Trade Unions*, p. 32.

(*t*) This passage was misunderstood by Lord Esher in his judgment in the

Mogul Case, 23 Q. B. D. at p. 606; an error which Lord Bramwell corrected in the House of Lords, [1892] A. C. at p. 48.

(*u*) (1881), 14 Cox, C. C. 508, at p. 513. See also at p. 518, where Barry, J., quotes with approval the second report of the Trade Unions Commission, 1867. This exposition of the law was followed by Pales, C. B., in *Kearney v. Lloyd* (1890), 25 L. R. Ir. 258, who there says (pp. 286, 287), “I desire to be distinctly understood as not determining (nor do I understand the Lord Justice to have determined) that every agreement in this third class (*i. e.*, to effect civil wrong) is indictable.” It is clear this could not be so in trivial cases, *e. g.*, of an agreement between two persons “to walk in a park without leave or to dishonour a bill.” Wright on *Conspiracy*, at p. 66. For conspiracies to coerce by means of breach of contract, see *Lanley v. Gye* (1853), 2 E. & B. at p. 230, per Crompton, J.; *R. v. Rowlands* (1851), 17 Q. B. 671; *R. v. Bunn* (1872), 12 Cox, C. C. 316.

In respect of trade disputes (*x*), the legislature has enacted that "an agreement or combination by two or more persons to do or procure to be done any act in contemplation or in furtherance of a trade dispute *between employers and workmen* (*y*) shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime" (*z*). The whole of the criminal law relating to strikes, it must now be taken, is contained in 38 & 39 Vict. c. 86 (*zz*), and the statutes referred to in it; no agreement connected with a trade dispute, not indictable under those Acts, is indictable on any other grounds (*a*). In a recent case reference was made to the *dicta* of Bramwell, J., in *Reg. v. Druitt* (*b*), and of Brett, J., in *Reg. v. Bann* (*c*), as authorities for the proposition that a person not indictable under these Acts might still be punished in respect of the same Acts for indictable conspiracy at Common Law. Coleridge, C. J., in delivering the judgment of the Court—constituted of five judges—thus dealt with the point:—

We are well aware of the great authority of the judges by whom the above cases were decided, but we are unable to concur in their *dicta*: and, speaking with all deference, we think they are not law. It seems to us that to hold that the very same acts which are expressly legalised by statute remain, nevertheless, crimes punishable by the Common Law, is contrary to good sense and elementary principle, and that the reports, therefore, cannot be correct. If the *dicta* are law, they render the statutes passed on these subjects practically inoperative; these statutes might as well not have been passed. . . . It seems to us that the law concerning combinations in reference to trade disputes is contained in 38 & 39 Vict. c. 86, and in the statutes referred to in it, and that acts which are not indictable under that statute are not now, if, indeed, they ever were, indictable at Common Law (*a*).

So far, as to the Criminal Law. In regard to civil liability, the question is not one of intention (*d*). The gist of a civil action for conspiracy, as in other civil cases, is the wrongful act causing the

(*x*) Now defined by sect. 5, sub-sect. (3) of the Trade Disputes Act, 1906. See p. 610, *infra*.

(*y*) The words in italics are repealed by sect. 5, sub-sect. (3), of the Trade Disputes Act, 1906.

(*z*) 38 & 39 Vict. c. 86, s. 3, para. 1; and see para. 4 for definition of "crime." Sect. 7 of this Act makes certain acts substantive offences and therefore "crimes" for purposes of sect. 3. See notes on this Act, *infra*.

(*zz*) As modified by sect. 2 of the Trade Disputes Act, 1906.

(*a*) *Connor v. Kent*, [1891] 2 Q. B. 545, 560. "Our present law . . . has

made an exception or resolved a doubt (according to the view taken of what the Common Law was) in favour of trade combinations as distinct from combinations for other purposes": Sir F. Pollock, *Memorandum on Law of Trade Combinations*, fifth and final report of Royal Commission on Labour (1894), Part I. p. 161.

(*b*) (1867), 10 Cox, C. C. 392.

(*c*) (1872), 12 Cox, C. C. 316.

(*d*) *Rex v. Cope* (1719), 1 Stra. 144; *Rex v. Parsons* (case of the Cock Lane ghost) (1763), 1 Wm. Bl. 392; *Rex v. Brissac and Scott* (1803), 4 East, 161; *Muleahy v. Reg.* (1868), L. R. 3 H. L. 306.

damage (*e*); and the plaintiff to succeed must show *injuria* and *damnum*. This was the ground of the decision in the *Mogul Case* (*f*):—

The plaintiffs in this case do not complain of any trespass, violence, force, fraud, or breach of contract, nor of any direct tort or violation of any right of the plaintiffs (*g*).

The evidence, it was held in that case, disclosed nothing but “competition pursued to the bitter end”; the Courts would not say what is “fair” and what “unfair” competition; and they declined to hold the defendants liable in damages for ousting rivals in trade by such means. Lord Herschell, in *Allen v. Flood* (*h*), states the legal ground of that decision to have been “that the acts by which the competition was pursued were all lawful acts, that they were acts not in themselves wrongful, but a mere exercise of the right to contract with whom and when and under what circumstances and upon what conditions they pleased.” The plaintiff argued that the element of unlawfulness was the fact that the combination was in “restraint of trade.” The House of Lords rejected that contention; an agreement in restraint of trade, though not enforceable as between the parties to it (*i*), does not make them liable to an action at Common Law (*k*).

Though an agreement to strike is not enforceable as between the parties to it, there is no doubt that, at any rate since the Conspiracy and Protection of Property Act, 1875, was passed, strikes and lock-outs *per se* are lawful (*l*).

But a strike may, if it is begun or maintained by unlawful acts, such as violence or threats of violence (*m*), intimidation (*n*), or illegal picketing (*o*), render the parties to the use of such means

(*e*) *Savile v. Roberts* (1698), 1 Ld. Raym. 374, 378; *Skinner v. Guntton* (1670), 1 Wms. Saund. (ed. 1845) note (1) on p. 229b; *Hutchins v. Hutchins* (1845), Bigelow's *Leading Cases on the Law of Torts* (ed. 1895, at p. 207; *Mogul Case* (1888), 21 Q. B. D. per Coleridge, C. J., at p. 549; and 23 Q. B. D. (C. A.), per Lord Bowen, at p. 616.

(*f*) [1892] A. C. p. 25; see p. 194, *supra*.

(*g*) At p. 44, per Lord Bramwell.

(*h*) [1898] A. C. 1, at p. 140.

(*i*) *Collins v. Locke* (1879), 4 App. Cas. 674; *Mineral Water Society v. Booth* (1887), 36 Ch. D. 465.

(*k*) *Mogul Case*, 23 Q. B. D. 598 (C. A.), per Bowen, L. J., at p. 619;

and *passim* in the report in the House of Lords, [1892] A. C. p. 25.

(*l*) *Gibson v. Lawson*, [1891] 2 Q. B. at p. 558, per Coleridge, C. J.: “The third section of that Act (38 & 39 Vict. c. 86) distinctly legalises strikes in the broadest terms.” *Lyons v. Wilkins*, [1896] 1 Ch. (C. A.) 811, at pp. 822, 828, 833.

(*m*) *Garrett v. Taylor*, Cro. Jac. 567; *Tactleton v. McGarvey*, 1 Peake, N. P. C. 270.

(*n*) See notes on sect. 7 of the Conspiracy and Protection of Property Act, 1875, *infra*.

(*o*) *Reg. v. Bauld* (1876), 13 Cox, C. C. 282; *Lyons v. Wilkins*, [1896] 1 Ch. 811. But see now as to “picketing,” sect. 2 of the Trade Disputes Act, 1906, *vide* p. 610, *infra*.

liable to an action both by the employer and the persons intimidated.

The Courts will restrain such conduct by interim and perpetual injunction (*p*). The employer will have a cause of action both against those guilty of a breach of contract and those who procure it (*q*). Some decisions went further. In *Temperton v. Russell* (*r*), conspiring to induce persons "not to enter into contracts with the plaintiff," with damage resulting therefrom, was held actionable (*s*). In *Allen v. Flood* (*t*), however, the House of Lords decided that for an individual merely to induce persons not to enter into contracts was not an actionable wrong. In view, therefore, of the nature of the action for conspiracy, can the decision in *Temperton v. Russell* (*r*) stand?

The House of Lords have, by their decision in *Quinn v. Leathem* (*u*), answered that question affirmatively. In that case it was held that a conspiracy formed with the intention of doing harm to the plaintiff in his trade, with damage resulting to him therefrom, was actionable (*x*). Such a conspiracy is *prima facie* unlawful, though it may be rendered innocent, as in the *Mogul Case* (*y*), by the presence of "just cause and excuse." Such "just cause and excuse" depends on the circumstances of such case (*z*).

(*p*) *Trotter v. London Building Trades Federation*, [1895] 72 L. T. N. S. 342; publication of "black list" was argued in the first instance as a "trade libel"; but, so far as can be gathered, Lord Halsbury seems to treat it as a case of "malicious interference." *Lyons v. Wilkins*, [1896] 1 Ch. 811; and [1899] 1 Ch. 255; *Charnock v. Court*, [1899] 2 Ch. 35; *Walters v. Green*, [1899] 2 Ch. 696; *Taff Vale, &c. v. Amalgamated Soc., &c.*, [1901] A. C. 426.

(*q*) *Bowen v. Hall* (1881), 6 Q. B. D. 333; *Mogul, &c. v. McGregor*, [1892] 1 Q. B. 25. But see now *Trade Disputes Act*, 1906, ss. 1 and 3, at p. 610, *infra*.

(*r*) [1893] 1 Q. B. 715; *Quinn v. Leathem*, [1901] A. C. 495. This latter case, while approving *Temperton v. Russell*, overrules Lord Escher's remarks as to malicious motive made in that case at p. 728.

(*s*) Apparently upon the authority of *Gregory v. Duke of Brunswick* (1844), 6 M. & G. 853; and see judgment of Lord Macnaghten in *Quinn v. Leathem*, [1901] A. C. at pp. 510, 511.

(*t*) [1898] A. C. 1.

(*u*) [1901] A. C. 495; *Giblan v. Nat. Amal., &c.*, [1903] 2 K. B. 600.

(*x*) It is submitted that this is the

true view of that decision. At the trial in Ireland, Fitzgibbon, L. J., never mentioned "coercion" or "intimidation" in his summing-up and direction to the jury, the burden of which is "intent to injure the plaintiff"; *Leathem v. Craig*, [1899] 2 I. R. pp. 167, 168. The "conspiracy to injure" (resulting in damage) is the ground of Lord Macnaghten's and Lord Brampton's judgments. Holmes, L. J., whose judgment in the Irish Court of Appeal, [1899] 2 I. R. at p. 771, is expressly assented to by Lord Macnaghten, and is adopted by Lord Robertson, expressly negatives (*l. c.* at p. 776) the unlawfulness of the means employed, and rests his decision entirely on the unlawful object. And see the judgments of Lord Ashbourne, and Walker, L. J. The materiality of the overt acts was that, done in pursuance of the unlawful conspiracy, they inflicted damage: see Lord Brampton's judgment, *l. c.* at p. 530; and of Andrews, J., [1899] 2 I. R. at p. 682; and Holmes, L. J., *ibid.* at p. 776.

(*y*) [1892] A. C. 25.

(*z*) *Glenmorgan Coal Co. v. South Wales Miners' Federation*, [1903] 2 K. B. 545; *Giblan v. Nat. Amal. Labourers, &c.*, [1903] 2 K. B. 600.

The unlawfulness may consist in the object of the combination or its means of operation, or both (*a*). It is lawful to hiss an actor (*b*), but a combination to hiss him in order to injure him in his profession, which results in his losing engagements, is actionable (*c*). In *Quinn v. Leatham* (*d*), the officials of a trade union conspired to injure the plaintiff in his business and so punish him for employing non-union labour; as a means to this end, they induced the plaintiff's servants not to continue in his service, and the plaintiff's customers not to continue to deal with him. Damage resulted to the plaintiff. It was held that he had a good cause of action. The object of the conspiracy, not its means of operation, was the main ground of decision (*e*); the judgment of Lord Lindley alone turns upon the "coercive" character of the means adopted. But there is contained in *Quinn v. Leatham* (*d*) abundant approval of the proposition that acts, lawful when done by one, may become unlawful when done by many (*f*). Mere inducement of others by A., with whatever motive, not to make contracts with D., gives D. no cause of action (*g*); the same inducement by A., B. and C., combining thereby to harm D. in his trade or profession, is actionable if damage result. This was the question expressly left untouched in *Allen v. Flood* (*h*).

It is not the mere added fact of the conspiracy which makes unlawful the acts which would not be unlawful if done by only one. It can, in my opinion, be properly held in a case like this to be the altered character which . . . the concerted action impresses on the acts themselves (*i*).

(*a*) [1901] A. C. per Lord Brampton, at p. 528; and [1899] 2 I. R. per Holmes, L. J., at p. 776.

(*b*) *Dibden v. Swan* (1793), 1 Esp. 27.

(*c*) *Gregory v. The Duke of Brunswick* (1843), 6 M. & G. 205, 953; 6 Scott, N. R. 809.

(*d*) See note (*u*), *ante*.

(*e*) *Vide* note (*x*), *supra*.

(*f*) [1901] A. C. per Lord Macnaghten, at p. 510; per Lord Brampton, at p. 530; per Lord Lindley, at p. 538; and see [1899] 2 I. R. at p. 676, per Andrews, J.; and the *Magd Case*, [1892] A. C. at pp. 38, 45, 60. See the judgment of Phillimore, J., in *Boots v. Grundy* (1900), 82 L. T. 769; but see now Trade Disputes Act, 1906, ss. 1 and 3.

(*g*) *Allen v. Flood*, [1898] A. C. 1.

(*h*) [1898] A. C. at pp. 122, 153, 169.

(*i*) See the judgment of Andrews, J., in *Leatham v. Craig*, [1899] 2 I. R. at pp. 684, 685. It is difficult to see how the decision in *Kearney v. Lloyd* (1890), 26 L. R. Ir. 268, can stand. The reasoning

of Pales, C. B., in that case, and in his dissenting judgment in *Leatham v. Craig* (*l. c.* at p. 701), is identical, save for the material added in the latter case by the decision in *Allen v. Flood*. The two must stand or fall together. There was in *Kearney v. Lloyd*, according to the findings of the jury (*l. c.* at p. 276) in answer to questions 7, 10, 11 and 12, a combination formed partly with the intention of injuring the plaintiff in his calling, with damage resulting to him in consequence. Such facts, according to *Quinn v. Leatham*, found a good cause of action. It cannot, since the decision in the last-mentioned case, be held that an action for conspiracy is not maintainable unless the end or means of the conspiracy constitute a legal injury, actionable if committed by a single person. The explanation by Andrews, J., in *Leatham v. Craig*, [1899] 2 I. R. at p. 681, of his assent to the decision in *Kearney v. Lloyd* is in respect of its first ground somewhat hard to reconcile with

It was argued for the appellant that the effect of sect. 3 of the Conspiracy and Protection of Property Act, 1875, was to make a combination such as they formed not actionable. But the House of Lords held that that section "had nothing to do with civil remedies" (*j*). They remained as they were before the statute.

The truth was that, as Lindley, L. J., put it in the course of the argument in *Lyons v. Wilkins* (*k*), it was impossible to "make a strike effective without doing more than is lawful." The legislation of 1871 and 1875 had done something towards narrowing the lines of the Criminal Law in relation to trade disputes, but the Civil Law still restrained and visited with damages cases that those statutes were passed to protect (*l*). What Sir James Stephen wrote of the state of the Criminal Law as to strikes after the passing of 6 Geo. IV. c. 129, might almost have been written of the law as it stood before the passing of the Trade Disputes Act, 1906, viewed in its civil and criminal sides together:—

A bare agreement not to work except upon specified terms was all that the law permitted to workmen. . . . It is difficult to see how, in the case of a conflict of interests, it is possible to separate the two objects of benefiting yourself and injuring your antagonist. Every strike is in the nature of an act of war. Gain on one side implies loss on the other, and to say that it is lawful to combine to protect your own interest, but unlawful to combine to injure your antagonist, is taking away with one hand a right given with the other (*m*).

But the Trade Disputes Act, 1906 (p. 606, *infra*), has changed all this. Sect. 1 of that Act renders such an action as *Quinn v. Leatham* unmaintainable, on the ground that the acts there complained of were done in furtherance of a "trade dispute," as by that Act defined, and that there was no act done in that case which would have been actionable apart from combination. Further, sect. 3 of that Act makes mere interference, in furtherance of a "trade dis-

the findings of the jury in that case; and in respect of its second ground is no explanation at all, because there being a conspiracy to injure, followed by damage, the lawfulness or unlawfulness of the means is immaterial. *Huttley v. Simmons*, [1898] 1 Q. B. 181, it is submitted, is also overruled by *Quinn v. Leatham*. The decision there on the points of conspiracy is the same as that of Pales, C. B., in *Leatham v. Craig*, and similarly is founded on *Kearney v. Lloyd and Allen v. Flood*. There was not even a question left to the jury in *Huttley v. Simmons* as to the intention with which the conspiracy was formed: see per Lord Lindley in *Quinn v. Leatham*,

at p. 510; and per Lord Brampton, *ibid.* at p. 531.

(*j*) *l. c.* per Lord Macnaghten, at p. 512; per Lord Lindley, at p. 542; and see per Andrews, J., in *Leatham v. Craig*, [1899] 2 L. R. at p. 684.

(*k*) [1896] 1 Ch. D. at p. 820.

(*l*) A combination to ruin an employer in the course of a trade dispute could not, apart from the commission of specific criminal acts, be indictable since the Conspiracy Act, 1875, s. 3; but, as we have seen, it is more than doubtful whether it is not *per se* actionable.

(*m*) Stephen's *Hist. Crim. Law*, vol. iii. p. 218 (ed. 1883).

pute," with a man's right to dispose of his labour or capital as he wills (*n*) not actionable.

There are *dicta* which show that it was realised that the law of conspiracy as it formerly stood must be used sparingly in order that it might not become an engine of oppression (*o*). It is thought by some that the Trade Disputes Act, 1906, has, in its design of making such oppression impossible, opened the door to another not less pernicious form of tyranny.

A trade union is defined, by sect. 16 of the Trade Union Act Amendment Act, 1876, which repeals and replaces the definition in the principal Act, 1871, as follows:—

Any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if the principal Act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade.

And by sect. 5, sub-sect. (2), of the Trade Disputes Act, 1906, it is provided:

In this Act the expression "trade union" has the same meaning as in the Trade Union Acts, 1871 and 1876, and shall include any combination as therein defined, notwithstanding that such combination may be the branch of a trade union.

Apart from legislation, trade unions are, and always have been, at Common Law as legal as any other voluntary society. They could proceed against their officers for fraud or embezzlement (*p*).

In an action upon a bond given to the plaintiff, as treasurer of a friendly society, it was held that the plaintiff might recover, though the society was not registered (under 33 Geo. III. c. 54), as the bond was good at Common Law, and "there was no express provision avoiding securities given to treasurers neglecting to register the rules" (*q*). An unregistered Friendly Society was, however, only a partnership; consequently a motion upon a bill by some members of such society, that the trustees should pay into

(*n*) This was very largely the ground of Lord Brampton's decision in *Quinn v. Leatham*, *l. c.* at pp. 525—527.

(*o*) Per Bowen, L. J., in the *Mogul Case*, 23 Q. B. D. at p. 616: "It is necessary to be very careful not to press the doctrine of illegal conspiracy beyond that which is necessary for the protection of individuals or of the public."

(*p*) *Hornby v. Close* (1867), 2 Q. B. 153; *Farrer v. Close* (1867), L. R. 4

Q. B. 602, where Cockburn, L. J., notices the former decision (at p. 608), the principle of which was that the society in question, being not entitled to the advantages given by the Friendly Society Acts, "in case of any misappropriation of its funds, must be left to its legal remedies."

(*q*) *Jones v. Woollam* (1822), 5 B. & Ald. 769.

the bank certain sums of money divided among the members, was refused; the society being only a partnership, the plaintiffs must bring in the members who had received the shares of the division (*r*).

The main objects of the Trade Union Act, 1871, may be summarised as follows:—

- (1) To enunciate the law as to restraint of trade in relation to trade unions generally (*s*);
- (2) To make trade unions, on condition of registration (sects. 6—13, 18), corporate bodies capable, by representatives, of acquiring, holding, and dealing with, and of suing and being sued, in respect of real (*t*) and personal property (sects. 7—9);
- (3) To regulate the liabilities of trade union officers (sects. 10, 11) and give trade unions rights of summary procedure against officers, members, or other persons for fraud or embezzlement (sect. 12).

The general terms of sect. 3 are qualified by sect. 4. The effect of that section is that an action to directly enforce or to recover damages for the breach of any of the agreements which it mentions “cannot be maintained unless it can be maintained independently of sect. 3” (*u*). Among the agreements mentioned in sect. 4 is “(3) any agreement for the application of the funds of a trade union (*a*) to provide benefits to members.” It is only the *direct* enforcement of any such agreement that is dealt with. When, therefore, some members of a trade union asked for an injunction to restrain other members from paying away money in pursuance of an amalgamation scheme, Fry, J. granted it. “An order that the defendants should pay money to the plaintiff would be a direct enforcement of an agreement for the application of the funds, but all that is sought here is to prevent the payment of the money to somebody else. Either that is no enforcement of an agreement at all, or it is an indirect enforcement” (*r*). It would

(*r*) *Beaumont v. Meredith* (1814), 3 Ves. & B. 180.

(*s*) The provision (sect. 2) as to the Criminal Law must be taken to be declaratory of the Common Law: *Mogul Case*, [1892] A. C. 25. Sect. 3 changed the Common Law. The scope of sect. 2 has been enormously widened in respect of strikes by sect. 3 of the Conspiracy and Protection of Property Act, 1875.

(*t*) “Not exceeding one acre”: sect. 7.

(*u*) Per Lindley, L. J., in *Swaine v. Wilson* (1889), 24 Q. B. D. 252, 259; see *Rigby v. Connol* (1880), 14 Ch. D. 482, 491.

(*r*) *Wolfe v. Matthews* (1882), 21 Ch. D. 194, 196; approved in *Howden v. Yorkshire Miners' Assoc.*, [1903] 1 K. B. 308, which decision was affirmed by a majority of the House of Lords, [1905] A. C. 256. The question is discussed in *Steele v. South Wales Miners' Federation*, [1907] 1 K. B. 361. See the

seem that there were in that case rules specifically naming the benefits in consideration of which the plaintiffs had paid their subscriptions, because they asked for an injunction on the ground that "an inconsistent application of the funds is about to be made by the defendants to some other persons, not according to the rules of the association" (*y*). If payment in pursuance of an amalgamation scheme had been one of the objects of the common fund (into which the subscriptions were paid), the plaintiffs would doubtless have failed. So, too, if payment to men on strike be named as an object of the common fund (which it almost always is), there would seem to be no way of restraining, by injunction or otherwise, the officers of the society from expending that fund in such payments; unless the payments are made in breach of the conditions laid down in the rules permitting them (*z*). A special fund, however, expressly set apart for sickness, superannuation, &c., might be protected by injunction (*a*). An action to restrain a misapplication of funds *ultra vires* the union may be brought by a single member in his own individual right; at least, in cases when the trustees are unable or refuse to act (*b*). Any attempt at a direct enforcement of a right to benefits in a trade union is useless (*c*). A trade union is enabled, by sect. 12 of the Act of 1871, to recover by summary proceedings any money that has been improperly applied.

The House of Lords decided, in *Taff Vale Railway v. Amalgamated Society of Railway Servants* (*d*), that a trade union may be sued for the torts of its agents under its registered name; its

cases collected in the note on sect. 4, *infra*.

(*y*) *Ibid.* p. 196.

(*z*) *Howden v. Yorkshire Miners' Assoc.*, [1903] 1 K. B. 308; [1905] A. C. 256.

(*a*) But such ear-marking is rare. See Report of Committee on Old Age Pensions, 1898, evidence of Mr. L. Burnett, Q. 2,109: "I think you have already stated that there is a superannuation fund, and certain sums are invested. Is there any security against that fund being exhausted to meet a strike?" A.: "In the special cases in which there is an absolute investment of money for superannuation purposes there is not much danger of that. But this is what happens in the majority of cases: there is no invested fund specially set apart for superannuation purposes; there is merely the general fund of a society from which

superannuation benefit is paid. In that case it is possible that the whole of that fund might be exhausted through the demands of a big trade dispute." And see the remarks of Lord Macnaghten in the *Taff Vale Case*, [1903] A. C. at p. 437.

(*b*) *Howden v. Yorkshire Miners' Assoc.*, [1903] 1 K. B. 308; [1905] A. C. 256, per Lord Lindley, at p. 280. See *Stevens v. Chown*, [1901] 1 Ch. 894.

(*c*) *Rigby v. Connol* (1880), 14 Ch. D. 482; *Duke v. Littleboy* (1880), 49 L. J. Ch. 802; *Winder v. Governors and Guardians, &c.* (1888), 20 Q. B. D. 412; *Crocker v. Knight*, [1892] 1 Q. B. 702; *Chamberlain's Wharf v. Smith*, [1900] 2 Ch. D. 605.

(*d*) [1901] A. C. 426. The trustees were added as defendants by the Court of Appeal to enable the funds of the union to be reached.

liability in this respect being the same as in the case of any other principal and agent (*e*). But this decision is now overruled by the Trade Disputes Act, 1906, s. 4, by virtue of which trade unions cannot be sued for tort.

34 & 35 VICT. c. 31 (1871).

An Act to amend the Law relating to Trade Unions.

Preliminary.

Short title. 1. This Act may be cited as "The Trade Union Act, 1871."

Criminal Provisions.

Trade union not criminal. 2. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise.

This set a doubtful point at rest: see p. 569, *supra*.

Trade union not unlawful for civil purposes. 3. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust.

Lord Bramwell saw in this section a decisive argument against the contention that combination in restraint of trade, as such, was indictable: *Mogul v. McGregor*, [1892] A. C. 25, 47.

A trade union had passed a resolution for the winding-up of its affairs and the distribution of its assets among its then members. Some of the rules, for the breach of which certain members had been expelled, were in restraint of trade. Did that fact render the resolution and the rules void so as to entitle the expelled members to a share of the assets? North, J., held it did not: *Strick v. Swansea, &c.* (1887), 36 Ch. D. 558.

A society is not illegal at Common Law as being in restraint of trade, merely because some of its rules are so; particularly if those rules are reasonably required for purposes of management, and are not oppressive to the public: *Swaine v. Wilson* (1889), 24 Q. B. D. 252.

Trade union contracts, when not enforceable. 4. Nothing in this Act shall enable any Court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements, namely,

(1) Any agreement between members of a trade union as such, concerning the conditions on which any members for the time being of such trade

(*e*) *Giblan v. National Amalgamated Labourers' Union, &c.*, [1903] 2 K. B. 600. In *Denaby and Cateby Main Collieries, Ltd. v. Yorkshire Miners' Assoc.*, [1906] A. C. 384, the House of Lords held, on the construction of the

rules of the defendant society, that there was, in view of the facts proved, no evidence of authorisation or ratification by the defendants of any of the acts complained of.

union shall or shall not sell their goods, transact business, employ, or be employed (*a*):

- (2) Any agreement for the payment by any person of any subscription or penalty to a trade union:
- (3) Any agreement for the application of the funds of a trade union,—
 - (a) To provide benefits to members (*b*); or,
 - (b) To furnish contributions to any employer or workman not a member of such trade union, in consideration of such employer or workman acting in conformity with the rules or resolutions of such trade union; or,
 - (c) To discharge any fine imposed upon any person by sentence of a court of justice; or,
- (4) Any agreement made between one trade union and another; or,
- (5) Any bond to secure the performance of any of the above-mentioned agreements.

But nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful (*c*).

This section limits sect. 3, and makes it necessary that an action to enforce directly or to recover damages for the breach of any of the agreements it mentions, if it is to lie, should be maintainable at Common Law: *Rigby v. Connol* (1880), 14 Ch. D. 482, 491; *Swaine v. Wilson* (1889), 24 Q. B. D. 252, 259.

The section does not apply where the proceedings are legally taken independently of this Act, *e.g.*, where the society is legal at Common Law (*Swaine v. Wilson*, *l.c.*; see *Hornby v. Close* (1867), L. R. 2 Q. B. 153; and *Farrer v. Close* (1869), L. R. 4 Q. B. 602), or where the application is for the distribution of the society's assets in obedience to a winding-up order made by the Court (*Strick v. Swansea, &c.* (1887), 36 Ch. D. 558), even though some of the rules to be given effect to in the distribution are in restraint of trade: *ibid.*; see *Burke v. Amalgamated Society of Dyers*, [1906] 2 K. B. 583.

“Directly enforcing.” See p. 578, *supra*. *Rigby v. Connol* (1880), 14 Ch. D. 482; *Duke v. Littleboy* (1880), 49 L. J. Ch. 802; *Wolfe v. Matthews* (1882), 21 Ch. D. 194; *Winder v. Governors and Guardians, &c.* (1888), 20 Q. B. D. 412; *Crocker v. Knight*, [1892] 1 Q. B. 702 (the case of a member's nominee); *Chamberlain's Wharf v. Smith*, [1901] 2 Ch. 605; *Howden v. Yorkshire Miners' Assoc.*, [1903] 1 K. B. 308; [1905] A. C. 256; *Burke v. Amalgamated Society of Dyers*, [1906] 2 K. B. 583.

5. The following Acts, that is to say,

- (1) The Friendly Societies Acts, 1855 and 1858, and the Acts amending the same (*d*);
- (2) The Industrial and Provident Societies Act, 1867, and any Act amending the same (*e*); and
- (3) The Companies Acts, 1862 and 1867,

shall not apply to any trade union, and the registration of any trade union under any of the said Acts shall be void, and the deposit of the rules of any trade union made under the Friendly Societies Acts, 1855 and 1858, and the

Friendly Societies, &c. Acts not to apply to trade unions.

(*a*) *Mineral Water, &c. v. Booth* (1887), 36 Ch. D. 465; *Chamberlain's Wharf v. Smith*, [1901] 2 Ch. 605. For the discussion of the Common Law relating to such an agreement, see *Collins v. Locke* (1879), 4 A. C. 674.

(*b*) See cases cited in note on “directly enforcing” in text, *supra*.

(*c*) See *Strick v. Swansea, &c.* (1887), 36 Ch. D. 558, 561.

(*d*) Repealed and consolidated by the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25).

(*e*) Repealed and consolidated by 59 & 60 Vict. c. 26.

Acts amending the same, before the passing of this Act, shall cease to be of any effect.

Deposit of rules. Only a legal trade union might deposit its rules under those Acts: *Hoinby v. Close* (1867), L. R. 2 Q. B. 153; *Farrer v. Close* (1869), L. R. 4 Q. B. 652. See note on sect. 12, *infra*.

Sect. 2 of the Trade Union Act Amendment Act, 1876, makes the Friendly Societies Act apply in the case of a trade union "which insures or pays money on the death of a child under ten years of age." See note on that section, *infra*.

Registered Trade Unions.

Registry of
trade unions.

6. Any seven or more members of a trade union may by subscribing their names to the rules of the union, and otherwise complying with the provisions of this Act with respect to registry, register such trade union under this Act, provided that if any one of the purposes of such trade union be unlawful such registration shall be void.

Land for
trade unions
may be
purchased
or leased.

7. It shall be lawful for any trade union registered under this Act to purchase or take upon lease in the names of the trustees for the time being of such union any land not exceeding one acre, and to sell, exchange, mortgage, or let the same, and no purchaser, assignee, mortgagee, or tenant shall be bound to inquire whether the trustees have authority for any sale, exchange, mortgage, or letting, and the receipt of the trustees shall be a discharge for the money arising therefrom; and for the purpose of this section every branch of a trade union shall be considered a distinct union.

In *In re Amos, Carrier v. Price*, [1891] 3 Ch. 159, there was a bequest and devise of leasehold and freehold property in remainder to a registered trade union; and it was argued that the word "purchase" in this section meant "to acquire otherwise than by descent or escheat"; but North, J., held that it was only by virtue of this section that a trade union can acquire and hold land at all, and that the word "purchase" in the section meant to acquire out-and-out by a payment of money down, as opposed to "taking a lease," *i.e.*, a tenancy at a yearly rent. He also held that the bequest was void for perpetuity, and that a bequest of an annuity of 5*l.* to a benevolent fund administered by the trade union, to be paid by the devisees of the land, was void, as being, *inter alia*, against the Statute of Mortmain. *Query*: how is this decision affected by the Mortmain and Charitable Uses Act, 1891?

Property of
trade unions
vested in
trustees.

8. All real and personal estate whatsoever belonging to any trade union registered under this Act shall be vested in the trustees for the time being of the trade union appointed as provided by this Act for the use and benefit of such trade union and the members thereof, and the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch (*f*), and be under the control of such trustees, their respective executors or administrators, according to their respective claims and interests, and upon the death or removal of any such trustees the same shall vest in the succeeding trustees for the same estate and interest as the former trustees had therein, and subject to the same trusts, without any conveyance or assignment whatsoever, save and except in the case of stocks and securities in the public funds of Great Britain and Ireland, which shall be transferred into the names of such new trustees; and in all actions, or suits, or indictments,

(*f*) "Or of the trustees of the trade union, if the rules of the trade union so provide." See sect. 3 of the Trade Union Act Amendment Act, 1876, *infra*.

or summary proceedings before any court of summary jurisdiction, touching or concerning any such property, the same shall be stated to be the property of the person or persons for the time being holding the said office of trustee, in their proper names, as trustees of such trade union, without any further description.

9. The trustees of any trade union registered under this Act, or any other officer of such trade union who may be authorised so to do by the rules thereof, are hereby empowered to bring or defend, or cause to be brought or defended, any action, suit, prosecution, or complaint in any court of law or equity, touching or concerning the property, right, or claim to property of the trade union; and shall and may, in all cases concerning the real or personal property of such trade union, sue and be sued, plead and be impleaded, in any court of law or equity, in their proper names, without other description than the title of their office; and no such action, suit, prosecution, or complaint shall be discontinued or shall abate by the death or removal from office of such persons or any of them, but the same shall and may be proceeded in by their successor or successors as if such death, resignation, or removal had not taken place; and such successors shall pay or receive the like costs as if the action, suit, prosecution, or complaint had been commenced in their names for the benefit of or to be reimbursed from the funds of such trade union, and the summons to be issued to such trustee or other officer may be served by leaving the same at the registered office of the trade union.

Actions, &c.
by or against
trustees.

See note on sect. 4, sub-sect. (2), of Trade Disputes Act, 1906, at p. 607, *infra*. If an officer of a trade union wilfully withholds money of the trade union, he is not, in the absence of fraud, liable to the penalties imposed by sect. 12 of this Act, but he may be sued under this section for the recovery of the money: *Madden v. Rhodes*, [1906] 1 K. B. 534.

10. A trustee of any trade union registered under this Act shall not be liable to make good any deficiency which may arise or happen in the funds of such trade union, but shall be liable only for the moneys which shall be actually received by him on account of such trade union.

Limitation of
responsibility
of trustees.

11. Every treasurer or other officer of a trade union registered under this Act, at such times as by the rules of such trade union he should render such account as hereinafter mentioned, or upon being required so to do, shall render to the trustees of the trade union, or to the members of such trade union, at a meeting of the trade union, a just and true account of all moneys received and paid by him since he last rendered the like account, and of the balance then remaining in his hands, and of all bonds or securities of such trade union, which account the said trustees shall cause to be audited by some fit and proper person or persons by them to be appointed; and such treasurer, if thereunto required, upon the said account being audited, shall forthwith hand over to the said trustees the balance which on such audit appears to be due from him, and shall also, if required, hand over to such trustees all securities and effects, books, papers, and property of the said trade union in his hands or custody; and if he fail to do so the trustees of the said trade union may sue such treasurer in any competent court for the balance appearing to have been due from him upon the account last rendered by

Treasurers,
&c. to
account.

him, and for all the moneys since received by him on account of the said trade union, and for the securities and effects, books, papers, and property, in his hands or custody, leaving him to set off in such action the sums, if any, which he may have since paid on account of the said trade union; and in such action the said trustees shall be entitled to recover their full costs of suit, to be taxed as between attorney and client.

Punishment
for with-
holding
money, &c.

12. If any officer, member, or other person being or representing himself to be a member of a trade union registered under this Act, or the nominee, executor, administrator, or assignee of a member thereof, or any person whatsoever, by false representation or imposition obtain possession of any moneys, securities, books, papers, or other effects of such trade union, or, having the same in his possession, wilfully withhold or fraudulently misapply the same, or wilfully apply any part of the same to purposes other than those expressed or directed in the rules of such trade union, or any part thereof, the court of summary jurisdiction for the place in which the registered office of the trade union is situate (*g*), upon a complaint made by any person on behalf of such trade union, or by the registrar, or in Scotland at the instance of the procurator fiscal of the court to which such complaint is competently made, or of the trade union, with his concurrence, may, by summary order, order such officer, member, or other person to deliver up all such moneys, securities, books, papers, or other effects to the trade union, or to repay the amount of money applied improperly, and to pay, if the court think fit, a further sum of money not exceeding twenty pounds, together with costs not exceeding twenty shillings; and, in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs aforesaid, the said court may order the said person so convicted to be imprisoned, with or without hard labour, for any time not exceeding three months: Provided, that nothing herein contained shall prevent the said trade union, or in Scotland her Majesty's Advocate, from proceeding by indictment against the said party; provided also, that no person shall be proceeded against by indictment if a conviction shall have been previously obtained for the same offence under the provisions of this Act.

There must be *criminal* misconduct to render an officer liable to penalties under this section: *Madden v. Rhodes*, [1906] 1 K. B. 534. See note on sect. 9, *supra*.

Before the passing of this Act the remedies of trade unions against their defaulting officers were these:—

- (1) Any trade union (if not a criminal society) might indict for embezzlement or misappropriation (*Reg. v. Stainer* (1870), 1 C. C. R. 230); and, *semble*, might sue for money had and received: *ibid.* 233; *Tenant v. Elliott* (1797), 1 B. & P. 3.
- (2) Any legal trade union, *ejusdem generis* with a friendly society, might, by registration or by deposit of their rules under 18 & 19 Viet. c. 63, acquire the right of summary procedure against their fraudulent officers under sect. 24 of that Act: *Hornby v. Close* (1867), L. R. 2 Q. B. 153; *Farrer v. Close* (1869), L. R. 4 Q. B. 602; *Reg. v. Registrar of Friendly Societies* (1872), L. R. 7 Q. B. 741, 746, per Blackburn, J.

By 32 & 33 Viet. c. 61, repealed by sect. 24, *infra*, trade unions with objects in restraint of trade were put on the same footing as those mentioned in (2).

In *Knight v. Whitmore* (1885), 53 L. T. (N. S.) 233, imprisonment under this section, in default of repayment of the money or payment of the penalty, was held

(*g*) "Or by the court of summary jurisdiction for the place where the offence has been committed": 39 & 40 Vict. c. 22, s. 5.

to have extinguished the debt. Cf. *Vernon v. Watson*, [1891] 2 Q. B. 288, decided on similar facts and a similar section (sect. 16, sub-sect. 9) in the Friendly Societies Act, 1875.

Registry of Trade Union.

13. With respect to the registry, under this Act, of a trade union, and of the rules thereof, the following provisions shall have effect : Regulations for registry.

- (1) An application to register the trade union and printed copies of the rules, together with a list of the titles and names of the officers, shall be sent to the registrar under this Act :
- (2) The registrar, upon being satisfied that the trade union has complied with the regulations respecting registry in force under this Act, shall register such trade union and such rules : (*h*)
- (3) No trade union shall be registered under a name identical with that by which any other existing trade union has been registered, or so nearly resembling such name as to be likely to deceive the members or the public : (*h*) Name.
- (4) Where a trade union applying to be registered has been in operation for more than a year before the date of such application, there shall be delivered to the registrar before the registry thereof a general statement of the receipts, funds, effects, and expenditure of such trade union in the same form, and showing the same particulars, as if it were the annual general statement required as hereinafter mentioned to be transmitted annually to the registrar :
- (5) The registrar upon registering such trade union shall issue a certificate of registry, which certificate, unless proved to have been withdrawn or cancelled, shall be conclusive evidence that the regulations of this Act with respect to registry have been complied with : Certificate of registry.
- (6) One of Her Majesty's Principal Secretaries of State may from time to time make regulations respecting registry under this Act, and respecting the seal (if any) to be used for the purpose of such registry, and the forms to be used for such registry, and the inspection of documents kept by the registrar under this Act, and respecting the fees, if any, to be paid on registry, not exceeding the fees specified in the second schedule to this Act, and generally for carrying this Act into effect (*i*).

14. With respect to the rules of a trade union registered under this Act, the following provisions shall have effect : Rules of registered trade unions.

- (1) The rules of every such trade union shall contain provisions in respect of the several matters mentioned in the first schedule to this Act.

(*h*) *R. v. Registrar of Friendly Societies* (1872). L. R. 7 Q. B. 941 ; 41 L. J. Q. B. 336 ; 27 L. T. N. S. 229. (Application to Registrar of Friendly Societies, under 34 & 35 Vict. c. 31, for registration by persons who stated that they were authorised to make the application by a resolution of the executive council of the Amalgamated Society of Carpenters and Joiners. A second application was made a few days after-

wards by different persons claiming to register a society in the same name, and stating that they were authorised to do so by a vote of the whole members. The registrar, being satisfied that a *bonâ fide* dispute, involving large interests, existed, declined to register the society ; and the Court of Queen's Bench held that he was right.)

(*i*) See the Statutory Rules and Orders Revised, vol. viii. p. 28.

- (2) A copy of the rules shall be delivered by the trade union to every person on demand on payment of a sum not exceeding one shilling.

Sub-sect. (1). See note on First Schedule.

Registered office of trade unions.

15. Every trade union registered under this Act shall have a registered office to which all communications and notices may be addressed; if any trade union under this Act is in operation for seven days without having such an office, such trade union and every officer thereof shall each incur a penalty not exceeding five pounds for every day during which it is so in operation.

Notice of the situation of such registered office, and of any change therein, shall be given to the registrar and recorded by him; until such notice is given the trade union shall not be deemed to have complied with the provisions of this Act.

Annual returns to be prepared as registrar may direct.

16. A general statement of the receipts, funds, effects, and expenditure of every trade union registered under this Act shall be transmitted to the registrar before the first day of June in every year, and shall show fully the assets and liabilities at the date, and the receipts and expenditure during the year preceding the date to which it is made out, of the trade union; and shall show separately the expenditure in respect of the several objects of the trade union, and shall be prepared and made out up to such date, in such form, and shall comprise such particulars, as the registrar may from time to time require; and every member of, and depositor in, any such trade union shall be entitled to receive, on application to the treasurer or secretary of that trade union, a copy of such general statement, without making any payment for the same.

Together with such general statement there shall be sent to the registrar a copy of all alterations of rules and new rules and changes of officers made by the trade union during the year preceding the date up to which the general statement is made out, and a copy of the rules of the trade union as they exist at that date.

Every trade union which fails to comply with or acts in contravention of this section, and also every officer of the trade union so failing, shall each be liable to a penalty not exceeding five pounds for each offence.

Every person who wilfully makes or orders to be made any false entry in or any omission from any such general statement, or in or from the return of such copies of rules or alterations of rules, shall be liable to a penalty not exceeding fifty pounds for each offence.

Registrars.

17. The registrars of the friendly societies in England, Scotland, and Ireland shall be the registrars under this Act.

The registrar shall lay before Parliament annual reports with respect to the matters transacted by such registrars in pursuance of this Act.

Circulating false copies of rules, &c. a misdemeanour.

18. If any person with intent to mislead or defraud gives to any member of a trade union registered under this Act, or to any person intending or applying to become a member of such trade union, a copy of any rules or of any alterations or amendments of the same other than those respectively which exist for the time being, on the pretence that the same are the existing rules of such trade union, or that there are no other rules of such trade

union, or if any person with the intent aforesaid gives a copy of any rules to any person on the pretence that such rules are the rules of a trade union registered under this Act which is not so registered, every person so offending shall be deemed guilty of a misdemeanour.

Legal Proceedings.

19. In England and Ireland all offences and penalties under this Act may be prosecuted and recovered in manner directed by The Summary Jurisdiction Acts. Summary proceedings for offences, penalties, &c.

In England and Ireland summary orders under this Act may be made and enforced on complaint before a court of summary jurisdiction in manner provided by The Summary Jurisdiction Acts.

Provided as follows :

1. The "Court of Summary Jurisdiction," when hearing and determining an information or complaint, shall be constituted in some one of the following manners ; that is to say,

(A) In England,

- (1) In any place within the jurisdiction of a metropolitan police magistrate or other stipendiary magistrate, of such magistrate or his substitute :
- (2) In the city of London, of the Lord Mayor or any alderman of the said city :
- (3) In any other place, of two or more justices of the peace sitting in petty sessions.

(B) In Ireland,

- (1) In the police district of Dublin metropolis, of a divisional justice :
- (2) In any other place, of a resident magistrate.

In Scotland all offences and penalties under this Act shall be prosecuted and recovered by the procurator fiscal of the county in the Sheriff Court under the provisions of The Summary Procedure Act, 1864.

In Scotland summary orders under this Act may be made and enforced on complaint in the Sheriff Court.

All the jurisdictions, powers, and authorities necessary for giving effect to these provisions relating to Scotland are hereby conferred on the sheriffs and their substitutes.

Provided that in England, Scotland, and Ireland—

2. The description of any offence under this Act in the words of such Act shall be sufficient in law.

3. Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant or prosecutor.

20. In England or Ireland, if any party feels aggrieved by any order or conviction made by a court of summary jurisdiction on determining any Appeal to quarter sessions.

complaint or information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following :

(1) The appeal shall be made to some court of general or quarter sessions (*k*).

Appeal in
Scotland.

21. In Scotland it shall be competent to any person to appeal against any order or conviction under this Act to the next Circuit Court of Justiciary, or where there are no Circuit Courts to the High Court of Justiciary at Edinburgh, in the manner prescribed by and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of His Majesty King George the Second, chapter forty-three, in regard to appeals to Circuit Courts in matters criminal, as the same may be altered or amended by any Acts of Parliament for the time being in force.

All penalties imposed under the provisions of this Act in Scotland may be enforced in default of payment by imprisonment for a term to be specified in the summons or complaint, but not exceeding three calendar months.

All penalties imposed and recovered under the provisions of this Act in Scotland shall be paid to the sheriff clerk, and shall be accounted for and paid by him to the Queen's and Lord Treasurer's Remembrancer on behalf of the Crown.

Interested
person not
to act as a
member of a
Court of
Appeal.

22. A person who is a master, or father, son, or brother of a master, in the particular manufacture, trade, or business in or in connection with which any offence under this Act is charged to have been committed shall not act as or as a member of a court of summary jurisdiction or appeal for the purposes of this Act.

Definitions.

Definitions.

23. In this Act—

As to Ireland, within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district and elsewhere in Ireland, "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same.

In Scotland the term "misdemeanour" means a crime and offence.

The term "trade union" means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, as would, if this Act had not passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade (*l*): Provided that this Act shall not affect—

- (1) Any agreement between partners as to their own business ;
- (2) Any agreement between an employer and those employed by him as to such employment ;
- (3) Any agreement in consideration of the sale of the good-will of a business or of instruction in any profession, trade, or handicraft.

(*k*) The rest of this section is repealed by the Summary Jurisdiction Act, 1884, and the proceedings on appeal regulated by sect. 31 of the Summary Jurisdiction

Act, 1879. See sect. 6 of the Summary Jurisdiction Act, 1884.

(*l*) Repealed and replaced by sect. 16 of Act of 1876, *post*.

Repeal.

24. The Trades Unions Funds Protection Act, 1869, is hereby repealed (*m*).
 Provided that this repeal shall not affect —

Repeal of
 Trades Unions
 Funds Pro-
 tection Act,
 1869, as
 herein stated.

- (1) Anything duly done or suffered under the said Act :
- (2) Any right or privilege acquired or any liability incurred under the said Act :
- (3) Any penalty, forfeiture, or other punishment incurred in respect of any offence against the said Act :
- (4) The institution of any investigation or legal proceeding or any other remedy for ascertaining, enforcing, recovering, or imposing any such liability, penalty, forfeiture, or punishment as aforesaid.

SCHEDULES.

FIRST SCHEDULE.

Of Matters to be provided for by the Rules of Trade Unions Registered under this Act.

1. The name of the trade union and place of meeting for the business of the trade union.
2. The whole of the objects for which the trade union is to be established, the purposes for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of such trade union.
3. The manner of making, altering, amending, and rescinding rules.
4. A provision for the appointment and removal of a general committee of management, of a trustee or trustees, treasurer, or other officers.
5. A provision for the investment of the funds, and for an annual or periodical audit of accounts.
6. The inspection of the books and names of members of the trade union by every person having an interest in the funds of the trade union (*n*).

The alteration by a trade union, during the insanity of a member, of a rule as to sick benefits, to the prejudice of that member, is binding upon him, if made in accordance with the rule authorizing and regulating the alteration of the rules of the union: *Burke v. Amalgamated Society of Dyers*, [1906] 2 K. B. 583. The rules of a trade union included among other objects the provision of parliamentary representation. There was a general rule authorizing the raising of funds by levies "to carry on the business of the federation in the objects hereinafter specified," but no special rule authorizing a levy for the specific purpose of returning and maintaining parliamentary representatives. A divisional Court refused to interfere with a levy made in pursuance of a resolution for the last-mentioned purpose on the ground of its being *ultra vires*: *Steele v. South Wales Miners' Federation*, [1907] 1 K. B. 361.

(*m*) See note on sect. 12, *supra*.

(*n*) "The rules of every trade union

shall provide for the manner of dissolving the same" (39 & 40 Vict. c. 22, s. 14).

SECOND SCHEDULE.

<i>Maximum Fees.</i>					<i>£</i>	<i>s.</i>	<i>d.</i>
For registering trade union	-	-	-	-	1	0	0
For registering alterations in rules	-	-	-	-	0	10	0
For inspection of documents	-	-	-	-	0	2	6

39 & 40 VICT. c. 22.

ARRANGEMENT OF CLAUSES.

- Clause.
1. Construction and short title.
 2. Trade unions to be within s. 28 of Friendly Societies Act, 1875.
 3. Amendment of s. 8 of principal Act.
 4. Provision in case of absence, &c. of trustee.
 5. Jurisdiction in offences.
 6. Registry of unions doing business in more than one country.
 7. Life Assurance Companies Acts not to apply to registered unions.
 8. Withdrawal or cancelling of certificate.
 9. Membership of minors.
 10. Nomination.
 11. Change of name.
 12. Amalgamation.
 13. Registration of changes of names and amalgamations.
 14. Dissolution.
 15. Penalty for failure to give notice.
 16. Definition of "trade union" altered.

An Act to amend the Trade Union Act, 1871 (1876).

- Construction and short title.
1. This Act and the Trade Union Act, 1871, hereinafter termed the principal Act, shall be construed as one Act (*o*), and may be cited together as the "Trade Union Acts, 1871 and 1876," and this Act may be cited separately as the "Trade Union Act Amendment Act, 1876."
- Trade unions insuring children's lives to be within Friendly Societies Act.
2. Notwithstanding anything in section five of the principal Act contained, a trade union, whether registered or unregistered, which insures or pays money on the death of a child under ten years of age shall be deemed to be within the provisions of section twenty-eight of the Friendly Societies Act, 1875 (*p*).

(*o*) See the judgment of Lindley, J., in *Crocker v. Knight*, [1892] 1 Q. B. 702, *vide* note on sect. 10 *infra*.

(*p*) The section referred to is repealed and re-enacted in substance by the

Friendly Societies Act, 1896, ss. 62—67, and s. 84, sub-ss. (f) and (g). See also sect. 13, sub-sect (1) of the Collecting Societies and Industrial Assurance Companies Act, 1896.

3. Whereas by section eight of the principal Act it is enacted that “the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch:” The said section shall be read and construed as if immediately after the hereinbefore recited words there were inserted the words “or of the trustees of the trade union, if the rules of the trade union so provide.”

Amendment
of sect. 8 of
principal Act.

4. When any person, being or having been a trustee of a trade union or of any branch of a trade union, and whether appointed before or after the legal establishment thereof, in whose name any stock belonging to such union or branch transferable at the Bank of England or Bank of Ireland is standing, either jointly with another or others, or solely, is absent from Great Britain or Ireland respectively, or becomes bankrupt, or files any petition, or executes any deed for liquidation of his affairs by assignment or arrangement, or for composition with his creditors, or becomes a lunatic, or is dead, or has been removed from his office of trustee, or if it be unknown whether such person is living or dead, the registrar, on application in writing from the secretary and three members of the union or branch, and on proof satisfactory to him, may direct the transfer of the stock into the names of any other persons as trustees for the union or branch; and such transfer shall be made by the surviving or continuing trustees, and if there be no such trustee, or if such trustees refuse or be unable to make such transfer, and the registrar so direct, then by the Accountant-General or deputy or assistant Accountant-General of the Bank of England or Bank of Ireland, as the case may be; and the Governors and Companies of the Bank of England and Bank of Ireland respectively are hereby indemnified for anything done by them or any of their officers in pursuance of this provision against any claim or demand of any person injuriously affected thereby.

Provision in
case of
absence, &c.
of trustee.

5. The jurisdiction conferred in the case of certain offences by section twelve of the principal Act upon the court of summary jurisdiction for the place in which the registered office of a trade union is situate may be exercised either by that court or by the court of summary jurisdiction for the place where the offence has been committed.

Jurisdiction
in offences.

6. Trade unions carrying on or intending to carry on business in more than one country shall be registered in the country in which their registered office is situate; but copies of the rules of such unions, and of all amendments of the same, shall, when registered, be sent to the registrar of each of the other countries, to be recorded by him, and until such rules be so recorded the union shall not be entitled to any of the privileges of this Act or the principal Act, in the country in which such rules have not been recorded, and until such amendments of rules be recorded the same shall not take effect in such country.

Registry of
unions doing
business in
more than one
country.

In this section “country” means England, Scotland, or Ireland.

7. Whereas by the “Life Assurance Companies Act, 1870,” it is provided that the said Act shall not apply to societies registered under the Acts relating to Friendly Societies: The said Act (or the amending Acts) shall not apply nor be deemed to have applied to trade unions registered or to be registered under the principal Act.

Life Assur-
ance Com-
panies Acts
not to apply
to registered
unions.

8. No certificate of registration of a trade union shall be withdrawn or cancelled otherwise than by the chief registrar of friendly societies, or

Withdrawing
or cancelling
of certificate.

in the case of trade unions registered and doing business exclusively in Scotland or Ireland, by the assistant registrar for Scotland or Ireland, and in the following cases :

- (1) At the request of the trade union to be evidenced in such manner as such chief or assistant registrar shall from time to time direct :
- (2) On proof to his satisfaction that a certificate of registration has been obtained by fraud or mistake, or that the registration of the trade union has become void under section six of the Trade Union Act, 1871, or that such trade union has wilfully and after notice from a registrar whom it may concern, violated any of the provisions of the Trade Union Acts, or has ceased to exist.

Not less than two months' previous notice in writing, specifying briefly the ground of any proposed withdrawal or cancelling of certificate (unless where the same is shown to have become void as aforesaid, in which case it shall be the duty of the chief or assistant registrar to cancel the same forthwith) shall be given by the chief or assistant registrar to a trade union before the certificate of registration of the same can be withdrawn or cancelled (except at its request).

A trade union whose certificate of registration has been withdrawn or cancelled shall, from the time of such withdrawal or cancelling, absolutely cease to enjoy as such the privileges of a registered trade union, but without prejudice to any liability actually incurred by such trade union, which may be enforced against the same as if such withdrawal or cancelling had not taken place.

Membership
of minors.

9. A person under the age of twenty-one, but above the age of sixteen, may be a member of a trade union, unless provision be made in the rules thereof to the contrary, and may, subject to the rules of the trade union, enjoy all the rights of a member except as herein provided, and execute all instruments and give all acquittances necessary, to be executed or given under the rules, but shall not be a member of the committee of management, trustee, or treasurer of the trade union.

Nomination
of persons to
whom sum
not exceeding
100*l.* may be
paid at death.

10. A member of a trade union not being under the age of sixteen years may, by writing under his hand, delivered at, or sent to, the registered office of the trade union, nominate any person not being an officer or servant of the trade union (unless such officer or servant is the husband, wife, father, mother, child, brother, sister, nephew, or niece of the nominator), to whom any moneys payable on the death of such member not exceeding fifty pounds (*q*) shall be paid at his decease, and may from time to time revoke or vary such nomination by a writing under his hand similarly delivered or sent ; and on receiving satisfactory proof of the death of a nominator, the trade union shall pay to the nominee the amount due to the deceased member not exceeding the sum aforesaid.

In *Crocker v. Knight*, [1892] 1 Q. B. 702, the plaintiff brought an action to recover a sum of money due to him as a nominee under this section. It was argued that this section in terms imposed on the trade union a statutory obligation to pay ; but the Court of Appeal held that to so decide would be to " directly enforce an agreement for the application of the funds for the benefit of members," contrary to sect. 4 of the principal Act, which, as the two Acts must be read together, they

(*q*) Raised to " one hundred pounds " by sect. 3 of the Provident Nominations Act, 1883.

could not do. The real object of the section was to enable minors over sixteen to leave money at their death (which they could not do by will), and so avoid the expense of administration. See the case of *Bennett v. Slater*, [1899] 1 Q. B. 45, which was decided on a similar section (sect. 15, sub-sect. 3) of the Friendly Societies Act, 1875: *vide* now sect. 56 of the Friendly Societies Act, 1896.

11. A trade union may, with the approval in writing of the chief registrar of friendly societies, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, of the assistant registrar for Scotland or Ireland respectively, change its name by the consent of not less than two-thirds of the total number of members. Change of name.

No change of name shall affect any right or obligation of the trade union or of any member thereof, and any pending legal proceedings may be continued by or against the trustees of the trade union or any other officer who may sue or be sued on behalf of such trade union notwithstanding its new name.

12. Any two or more trade unions may, by the consent of not less than two-thirds of the members of each or every such trade union, become amalgamated together as one trade union, with or without any dissolution or division of the funds of such trade unions, or either or any of them; but no amalgamation shall prejudice any right of a creditor of either or any union party thereto. Amalgamation.

13. Notice in writing of every change of name or amalgamation signed, in the case of a change of name, by seven members, and countersigned by the secretary of the trade union changing its name, and accompanied by a statutory declaration by such secretary that the provisions of this Act in respect of changes of name have been complied with, and in the case of an amalgamation signed by seven members, and countersigned by the secretary of each or every union party thereto, and accompanied by a statutory declaration by each or every such secretary that the provisions of this Act in respect of amalgamations have been complied with, shall be sent to the central office established by the Friendly Societies Act, 1875(r), and registered there, and until such change of name or amalgamation is so registered the same shall not take effect. Registration of changes of name and amalgamation.

14. The rules of every trade union shall provide for the manner of dissolving the same, and notice of every dissolution of a trade union under the hand of the secretary and seven members of the same shall be sent within fourteen days thereafter to the central office hereinbefore mentioned, or, in the case of trade unions registered and doing business exclusively in Scotland or Ireland, to the assistant registrar for Scotland or Ireland respectively, and shall be registered by them: Provided that the rules of any trade union registered before the passing of this Act shall not be invalidated by the absence of a provision for dissolution. Dissolution.

In *In re Printers and Transferrers' Amalgamated, &c.*, [1899] 2 Ch. 184, a trade union had been dissolved; there were no rules regulating the distribution of the society's funds; it was held that in the circumstances there was a resulting trust in favour of those who were members at the time of the dissolution.

(r) See sects. 1 and 2 of Friendly Societies Act, 1896.

Penalty for failure to give notice.

15. A trade union which fails to give any notice or send any document which it is required by this Act to give or send, and every officer or other person bound by the rules thereof to give or send the same, or if there be no such officer, then every member of the committee of management of the union, unless proved to have been ignorant of, or to have attempted to prevent the omission to give or send the same, is liable to a penalty of not less than one pound and not more than five pounds, recoverable at the suit of the chief or any assistant registrar of friendly societies, or of any person aggrieved, and to an additional penalty of the like amount for each week during which the omission continues.

Definition of "trade union" altered.

16. So much of section twenty-three of the principal Act as defines the term trade union, except the proviso qualifying such definition, is hereby repealed, and in lieu thereof be it enacted as follows :

The term "trade union" means any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if the principal Act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade.

See Trade Disputes Act, 1906, s. 5, sub-s. (2), *infra*.

See *Mareal Water, &c. Society v. Booth* (1887), 36 Ch. D. 465; *Swaine v. Wilson* (1889), 24 Q. B. D. 252.

56 & 57 VICT. c. 2 (1893).

An Act to exempt from Income Tax the Invested Funds of Trade Unions applied in Payment of Provident Benefits.

Provident funds of trade unions to be exempt from income tax.

1. A trade union duly registered under the Trade Union Acts, 1871 and 1876, shall be entitled to exemption from income tax chargeable under Schedules A., C. and D. of any Acts for granting duties of income tax in respect of the interest and dividends of the trade union applicable and applied solely for the purpose of provident benefits.

Provided always, that the exemption shall not extend to any trade union by the rules of which the amount assured to any member, or person nominated by or claiming under him, shall exceed the total sum of two hundred pounds, or the amount of any annuity granted to any person nominated by him, shall exceed the sum of thirty pounds per annum.

Mode of claiming exemption.

2. The exemption shall be claimed and allowed in the same manner as is prescribed by law in the case of income applicable and applied to charitable purposes.

Definition of "provident benefits."

3. In this Act the expression "provident benefits" means and includes any payment made to a member during sickness or incapacity from personal injury, or while out of work, or to an aged member by way of superannuation, or to a member who has met with an accident or has lost his tools by fire or theft, or a payment in discharge or aid of funeral expenses on the

death of a member or the wife of a member, or as provision for the children of the deceased member, where the payment in respect whereof exemption is claimed is a payment expressly authorised by the registered rules of the trade union claiming the exemption.

4. This Act may be cited as the Trade Union (Provident Funds) Act, Short title, 1893.

38 & 39 VICT. c. 86 (1875).

ARRANGEMENT OF CLAUSES.

Clauses.

1. Short title.
2. Commencement of Act.

Conspiracy and Protection of Property.

3. Amendment of law as to conspiracy in trade disputes.
4. Breach of contract by persons employed in supply of gas or water.
5. Breach of contract involving injury to persons or property.

Miscellaneous.

6. Penalty for neglect by master to provide food, clothing, &c., for servant or apprentice.
7. Penalty for intimidation or annoyance by violence or otherwise.
8. Reduction of penalties.

Legal Proceedings.

9. Power for offender under this Act to be tried on indictment and not by court of summary jurisdiction.
10. Proceedings before court of summary jurisdiction.
11. Regulations as to evidence.
12. Appeal to quarter sessions.

Definitions.

13. General definitions.
14. Definitions of "municipal authority" and "public company."
15. "Maliciously" in this Act construed as in Malicious Injuries to Property Act.

Saving Clause.

16. Saving as to sea service.

Repeal.

17. Repeal of Acts.

Application of Act to Scotland.

18. Application to Scotland. Definitions.
19. Recovery of penalties, &c., in Scotland.
20. Appeal in Scotland as prescribed by 20 Geo. II. c. 43.

Application of Act to Ireland.

21. Application to Ireland.

An Act for amending the Law relating to Conspiracy, and to the Protection of Property, and for other purposes.

- Short title. 1. This Act may be cited as the Conspiracy and Protection of Property Act, 1875.
- Commence- 2. This Act shall come into operation on the first day of September, one
ment of Act. thousand eight hundred and seventy-five.

Conspiracy, and Protection of Property.

Amendment
of law as to
conspiracy
in trade
disputes.

3. An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute *between employers and workmen(s)* shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime.

Nothing in this section shall exempt from punishment any persons guilty of a conspiracy for which a punishment is awarded by any Act of Parliament.

Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or sedition, or any offence against the State or the Sovereign.

A crime for the purposes of this section means an offence punishable on indictment, or an offence which is punishable on summary conviction, and for the commission of which the offender is liable under the statute making the offence punishable to be imprisoned either absolutely or at the discretion of the court as an alternative for some other punishment.

Where a person is convicted of any such agreement or combination as aforesaid to do or procure to be done an act which is punishable only on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three months, or such longer time, if any, as may have been prescribed by the statute for the punishment of the said act when committed by one person.

Sect. 1 of the Trade Disputes Act, 1906, adds a new paragraph after paragraph 1 of this section, relating to the civil action for conspiracy in connection with "trade disputes": see p. 610, *infra*.

This section limits the common law as to criminal conspiracies in two respects:—

- (1) By restricting indictment for conspiracy to cases where the act done in combination is a crime if done by an individual: see pp. 569 *et seq.*, *supra*, and the cases there cited.

(s) The words in italics are repealed by sect. 5, sub-sect. (3) of the Trade Disputes Act, 1906. See the definition of "trade dispute" in that section.

- (2) By abolishing, for purposes of punishment, the substantive misdemeanour of conspiracy, where the act to be done or procured by the combination is "punishable only on summary conviction." Consequently, be it noted, offences against clause 1 of sect. 1, and sects. 5, 6 (*t*) and 7 of this Act do not come within this exemption.

This section applies only to criminal proceedings, and has no reference to civil actions: *Quinn v. Leathem*, [1901] A. C. 495.

But see now sect. 1 of the Trade Disputes Act, 1906: *vide* p. 610, *infra*.

A difference between the officers of a trade union and an employer regarding his employment of non-union men is not a "trade dispute" within this section. *Seemle*, these words are restricted to a dispute between an employer and his own workmen: *Quinn v. Leathem*, *l. c.*

But this is no longer the law on either of these points: see Trade Disputes Act, 1906, s. 5, sub-s. (3): *vide* p. 610, *infra*.

4. Where a person employed by a municipal authority or by any company or contractor upon whom is imposed by Act of Parliament the duty, or who have otherwise assumed the duty of supplying any city, borough, town, or place, or any part thereof, with gas(*u*) or water, wilfully and maliciously breaks a contract of service with that authority or company or contractor, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city, borough, town, place, or part, wholly or to a great extent of their supply of gas or water, he shall, on conviction thereof by a court of summary jurisdiction or on indictment as hereinafter mentioned (*v*), be liable either to pay a penalty not exceeding twenty pounds or to be imprisoned for a term not exceeding three months, with or without hard labour.

Breach of contract by persons employed in supply of gas and water.

Every such municipal authority, company, or contractor as is mentioned in this section shall cause to be posted up, at the gas works or water works, as the case may be, belonging to such authority or company or contractor, a printed copy of this section in some conspicuous place where the same may be conveniently read by the persons employed, and as often as such copy becomes defaced, obliterated, or destroyed, shall cause it to be renewed with all reasonable despatch.

If any municipal authority or company or contractor make default in complying with the provisions of this section in relation to such notice as aforesaid, they or he shall incur, on summary conviction, a penalty not exceeding five pounds for every day during which such default continues, and every person who unlawfully injures, defaces, or covers up any notice so posted up as aforesaid in pursuance of this Act, shall be liable, on summary conviction, to a penalty not exceeding forty shillings.

5. Where any person wilfully and maliciously breaks a contract of service or of hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury, he shall, on conviction thereof by a court of summary jurisdiction, or on indictment as herein-after mentioned (*v*), be liable either to pay a penalty not

Breach of contract involving injury to persons or property.

(*t*) *Id*e sect. 9.

(*u*) See *R. v. Bunn* (1872), 12 Cox, C. C. 316 (Conspiracy at Common

Law). This case was dissented from in *Connor v. Kent*, [1891] 2 Q. B. 545, 560.

(*v*) See sect. 9.

exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Miscellaneous.

Penalty for neglect by master to provide food, clothing, &c., for servant or apprentice.

6. Where a master, being legally liable to provide for his servant or apprentice necessary food, clothing, medical aid, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, whereby the health of the servant or apprentice is or is likely to be seriously or permanently injured, he shall, on summary conviction, be liable either to pay a penalty not exceeding twenty pounds (*v*) or to be imprisoned for a term not exceeding six months, with or without hard labour.

See 24 & 25 Vict. c. 100, s. 26, which deals with the same offence, but does not mention "medical aid."

At common law "a master is bound, during the illness of his apprentice, to provide him with proper medicines" (*Reg. v. William Smith* (1837), 8 C. & P. 153), and will be liable to be indicted for failing to do so.

Penalty for intimidation or annoyance by violence or otherwise.

7. Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority,—

- (1) Uses violence to or intimidates such other person or his wife or children, or injures his property; or
- (2) Persistently follows such other person about from place to place; or,
- (3) Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or,
- (4) Watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or
- (5) Follows such other person with two or more other persons in a disorderly manner in or through any street or road,

shall, on conviction thereof by a court of summary jurisdiction, or on indictment as herein-after mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.

The last paragraph of this section is repealed by sect. 2 of the Trade Disputes Act, 1906; see p. 610, *infra*.

The object of this section is to distinguish between legitimate and illegitimate "picketing," and between persuasion and intimidation.

Intimidation. There has been much discussion as to the term "Intimidation," and it was long doubted how far the decisions upon 6 Geo. IV. c. 129 bore upon this section. Broadly stated, the effect of those decisions is that, to constitute intimidation, there need be no express language of menace; such words or acts as would make reasonably afraid are sufficient. *R. v. Selsby* (1847), note in 5 Cox, C. C. 495; *Reg. v. Roelands* (1850), 5 Cox, C. C. 437; *R. v. Drutt* (1867), 10 Cox, C. C. 592; and see the cases mentioned in note (p) on p. 574, *supra*.

In *Judge v. Bennett* (1887), 52 J. P. 347, a boot manufacturer, having discharged

(v) See sect. 9.

certain rivetters, the secretary of a trade union sent word that unless she took back all the men the finishers would go out and the shop be "picketed." The pickets were set, and they used no violence; a disorderly crowd collected, and the manufacturer stated that she was afraid of their violence. Stephen, J., with reference to these facts, observed:—

"Intimidation may mean any kind of threat, provided it make the person against whom it is used reasonably afraid."

A. L. Smith, J., in his judgment, said:—

"I do not agree that the mere fact of the picket-men being orderly and using no violence prevents their conduct being intimidation."

The ground has been very much cleared by the decisions in *Gibson v. Lawson* (x), and *Curran v. Treleaven* (indexed sub tit., *Connor v. Kent*, [1891] 2 Q. B. 445. In the former of these cases, the respondent, a fellow-workman of the appellant and a trade union delegate, told the foreman of the yard that, if the appellant did not leave his union and join theirs, all the members of their union would cease working after a certain date. The appellant refused to comply, and, in fear of the threatened strike, he was dismissed by his employer. There was evidence that the appellant was afraid that, owing to what the respondent had said, he would get no work. The Court (of five judges) held that, there having been no violence or threats of violence, there was no intimidation under this Act. In *Curran v. Treleaven*, the appellant, a trade union secretary, in pursuance of a previous intimation to the respondent, called out, in breach (as he knew) of subsisting contracts, all the respondent's union hands, because the respondent refused to cease employing non-union men, with the object of forcing the non-union men into the unions. There had been no violence or threats of violence, though the respondent swore that he was reasonably afraid that violence might be used to his workmen or property. The Court held that there was no intimidation under this statute, and quashed the conviction. The Court, having particular regard to the terms of sect. 1 of 34 & 35 Vict. c. 32 (y) (repealed by this Act), thought that the history of trade union legislation showed that violence or threats of violence were necessary to constitute intimidation under this statute, following on this point the ruling of Cave, J., in *Reg. v. McKeerit* (unreported); and stated that, in their opinion, the whole criminal law of strikes was contained in this statute and the statutes referred to in it (z). These cases lay it down that intimidation must be "a threat of something which, if executed, would be an offence against person or tangible property" (a). See, as to intimidation in civil actions, *Allen v. Flood*, [1898] A. C. 1, Lord Watson's judgment at p. 98, Lord Herschell's judgment at p. 130; *Quinn v. Leatham*, [1901] A. C. 495, Lord Lindley's judgment at pp. 537—540; *Gibson v. National Amalgamated, &c.*, [1903] 2 K. B. 600, per Stirling, L. J., at p. 623. For instances of intimidation by "black lists" and placards see *Jenkinson v. Nield* (1892), 8 T. L. R. 540; *Trotter v. London Building Trade Federation* (1895), 72 L. T. (N. S.) 342; *Quinn v. Leatham*, [1901] A. C. 495.

"Picketing." By this term is meant the posting men at the entrances or approaches to premises or works at which there is a strike, for the purpose of observing and reporting the workmen going to or coming from the works, and of inducing workmen not to accept work (b).

By 22 Vict. c. 34, it was provided that workmen were not to be deemed guilty of molestation or obstruction under the Act of 1825, simply because they entered into agreements for fixing the rate of wages or hours of labour, or endeavoured peaceably to persuade others to cease or abstain from work. On proceedings under this

(x) In this case *Reg. v. Drutt* and *Reg. v. Bunn* were expressly dissented from on the question of conspiracy. See the remarks of Lindley, L. J., on *Gibson v. Lawson*, in *Lyons v. Wilkins*, [1896] 1 Ch. 811, 824.

(y) Where the threat or intimidation must be (sub-sect. (2)) such "as would justify a justice of the peace . . . to bind over the person so threatening or intimidating to keep the peace."

(z) Mathew, J. (l. c. p. 550), says of *Judge v. Bennett*: "That case would

seem merely to have decided that a threat to do something specifically prohibited by the statute, if it in fact intimidates, is intimidation."

(a) Sir Frederick Pollock's *Memoirandum on Trade Combination*, Fifth Report, Labour Commission, 1896, p. 161.

(b) Defined in the glossary of the Labour Commission as "the act of men standing at the gates of mills, docks, &c. watching those who go in and out, and inducing them to strike work."

statute *Lush, J. (c)*, directed the jury that mere persuasion not to work by pickets was lawful; and in *R. v. Hubbert* (May, 1875), 13 Cox, C. C. 82 (decided under 34 & 35 Viet. c. 32), Mr. Russell Gurney directed the grand jury in his charge (*d*) that mere peaceable persuasion, without any interference with the free will, was lawful.

After the passing of the present Act, Huddleston, B., laid it down in *R. v. Bauld* (1876, 13 Cox, C. C. 282, that the words of sect. 7 must be taken strictly, and that watching or attending "for the purpose of persuading men to quit their employment would be illegal." This was the view taken by the Court of Appeal in *Lyons v. Wilkins*, [1896] 1 Ch. 811; [1899] 1 Ch. 255, where it was held that under this section any "watching or besetting," save for the mere purpose of "obtaining and communicating information" (*c*), was illegal; and that it was equally illegal to picket the premises of any other person (*e.g.*, a sub-manufacturer to the plaintiffs) for the purpose of inducing his workmen to cease working, with a view to compelling the plaintiffs to accede to the workmen's demands. Lord Lindley, who was a party to this decision on both occasions, speaks in *Quinn v. Leatham*, [1901] A. C. 495, 511, of this statute as follows:—

"This Act clearly recognises the legality of strikes and lock-outs up to a certain point. It is plainly legal now for workmen to combine not to work except on their own terms. On the other hand, it is clearly illegal for them or anyone else to use force or threats of violence to prevent other people from working on any terms which they think proper. But there are many ways short of violence, or the threat of it, of compelling persons to act in a way which they do not like. There are annoyances of all sorts and degrees; picketing is a distinct annoyance, and if damage results is an actionable nuisance at common law; but if confined merely to obtaining or communicating information, it is rendered lawful by the Act (sect. 7). Is a combination to annoy a person's customers, so as to compel them to leave him unless he obeys the combination, permitted by the Act or not? It is not forbidden by sect. 7; is it permitted by sect. 3? I cannot think that it is. The Court of Appeal (of which I was a member) so decided in *Lyons v. Wilkins*. . . ."

See *Farmer v. Wilson and others* (1900), 16 T. L. R. 309, where the point whether the complainants had a legal right to do the act which they were compelled to abstain from doing turned on sect. 111 of the Merchant Shipping Act, 1894.

But the law on this subject has been entirely changed by the Trade Disputes Act, 1906, s. 2. See p. 610, *infra*.

A conviction under this section must state specifically the act or acts which the complainant was to be compelled to do or not to do: *R. v. Mackenzie*, [1892] 2 Q. B. 519; see *Ex parte Wilkins* (1895), 64 L. J. M. C. 221. It must also specify the "property injured" (sub-sect. (1)): *Smith v. Moody*, [1903] 1 K. B. 56.

In *Smith v. Thomasson* (1890), 62 L. T. (N. S.) 68, it was held that a picket was rightly convicted of "persistently following" (sub-sect. 2), in these circumstances: the respondent, who had replaced a man on strike, left the mill-gate amid the hooting of a crowd; the appellant closely followed him, without speaking, down two streets.

(*c*) *R. v. Shepherd* (1869), 11 Cox, C. C. 325.

(*d*) Printed in the report of *Lyons v. Wilkins*, [1899] 1 Ch. in the note on pp. 262, 263.

(*e*) See the last clause of the section, which must be read with sub-sect. (4). There is no doubt that sect. 2 of the Trade Disputes Act, 1906, overrules *Lyons v. Wilkins* as a decision on the facts. "Peacefully persuading any person to work or abstain from working," to restrain which the interim injunction in that case was granted—

for there was no evidence of "unpeaceful" conduct—is now by that section legalised in terms. The difference between Vaughan Williams, L. J., and the majority of the Court in that case, [1899] 1 Ch. 255, as to the meaning of the words, "wrongfully and without legal authority," is no longer important. The effect of sect. 2 is to enact the view propounded by Vaughan Williams, L. J., and adopted by the Court of Appeal in *Ward, Lock & Co., Ltd. v. The Operative Printers' Assistants' Society and others* (1906), 22 T. L. R. 327; see particularly the judgment of Moulton, L. J.

8. Where in any Act relating to employers or workmen a pecuniary penalty is imposed in respect of any offence under such Act, and no power is given to reduce such penalty, the justices or court having jurisdiction in respect of such offence may, if they think it just so to do, impose by way of penalty in respect of such offence any sum not less than one-fourth of the penalty imposed by such Act (*f*). Reduction of penalties

Legal Proceedings.

9. Where a person is accused before a court of summary jurisdiction of any offence made punishable by this Act, and for which a penalty amounting to twenty pounds, or imprisonment, is imposed, the accused may, on appearing before the court of summary jurisdiction, declare that he objects to being tried for such offence by a court of summary jurisdiction, and thereupon the court of summary jurisdiction may deal with the case in all respects as if the accused were charged with an indictable offence and not an offence punishable on summary conviction, and the offence may be prosecuted on indictment accordingly (*g*). Power for offender under this Act to be tried on indictment and not by court of summary jurisdiction.

10. Every offence under this Act which is made punishable on conviction by a court of summary jurisdiction or on summary conviction, and every penalty under this Act recoverable on summary conviction may be prosecuted and recovered in manner provided by the Summary Jurisdiction Act. Proceedings before court of summary jurisdiction.

11. Provided, that upon the hearing and determining of any indictment or information under sections four, five, and six of this Act, the respective parties to the contract of service, their husbands or wives, shall be deemed and considered as competent witnesses. Regulations as to evidence.

But see now Criminal Evidence Act, 1898, which has changed the law since the decision in *Connor v. Kent*, [1891] 2 K. B. 545.

12. In England or Ireland, if any party feels aggrieved by any conviction made by a court of summary jurisdiction on determining any information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following: Appeal to quarter sessions.

(1) The appeal shall be made to some court of general or quarter sessions (*h*).

Definitions.

13. In this Act,—

The expression “the Summary Jurisdiction Act” (*i*) means the Act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter forty-three, intituled “An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders,” inclusive of any Acts amending the same; and

General definitions.

(*f*) See Summary Jurisdiction Act, 1879, s. 4.

(*g*) See S. J. Act, 1879, s. 17; *Reg. v. Cockshott*, [1898] 1 Q. B. 582.

(*h*) The rest of this section is repealed by Summary Jurisdiction Act, 1884,

and the proceedings on appeal are regulated by sect. 31 of the Summary Jurisdiction Act, 1879. See sect. 6 of the Act of 1884.

(*i*) See Interpretation Act, 1889, s. 13, sub-ss. (7), (10).

The expression "court of summary jurisdiction" (*k*) means—

- (1) As respects the City of London, the Lord Mayor or any alderman of the said city sitting at the Mansion House or Guildhall justice room; and
- (2) As respects any police court division in the metropolitan police district, any metropolitan police magistrate sitting at the police court for that division; and
- (3) As respects any city, town, liberty, borough, place, or district for which a stipendiary magistrate is for the time being acting, such stipendiary magistrate sitting at a police court or other place appointed in that behalf; and
- (4) Elsewhere any justice or justices of the peace to whom jurisdiction is given by the Summary Jurisdiction Act: provided that, as respects any case within the cognizance of such justice or justices as last aforesaid, an information under this Act shall be heard and determined by two or more justices of the peace in petty sessions sitting at some place appointed for holding petty sessions.

Nothing in this section contained shall restrict the jurisdiction of the Lord Mayor or any alderman of the city of London, or of any metropolitan police or stipendiary magistrate, in respect of any act or jurisdiction which may now be done or exercised by him out of court.

Definition of
"municipal
authority"
and "public
company."

14. The expression "municipal authority" in this Act means any of the following authorities, that is to say, the Metropolitan Board of Works, the Common Council of the City of London, the Commissioners of Sewers of the City of London, the town council of any borough for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled, "An Act to provide for the regulation of municipal corporations in England and Wales," and any Act amending the same (*l*), any commissioners, trustees, or other persons invested by any local Act of Parliament with powers of improving, cleansing, lighting, or paving any town, and any local board.

Any municipal authority or company or contractor who has obtained authority by or in pursuance of any general or local Act of Parliament to supply the streets of any city, borough, town, or place, or of any part thereof, with gas, or which is required by or in pursuance of any general or local Act of Parliament to supply water on demand to the inhabitants of any city, borough, town, or place, or any part thereof, shall, for the purposes of this Act be deemed to be a municipal authority or company or contractor upon whom is imposed by Act of Parliament the duty of supplying such city, borough, town, or place, or part thereof, with gas or water.

"Maliciously" in this Act construed as in Malicious Damage Act, 1861.

15. The word "maliciously," used in reference to any offence under this Act, shall be construed in the same manner as it is required by the fifty-eighth section of the Act relating to malicious injuries to property, that is to say, the Act of the session of the twenty-fourth and twenty-fifth years of

(*k*) See Interpretation Act, 1889, s. 13, sub-s. (11).

(*l*) This Act was repealed and re-

placed by the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50); see sect. 212, sub-sect. (1), for substitution here of reference to that Act.

the reign of her present Majesty, chapter ninety-seven, to be construed in reference to any offence committed under such last-mentioned Act.

Saving Clause.

16. Nothing in this Act shall apply to seamen or to apprentices to the sea Saving as to sea service.
service.

This section means that seamen are not to be punished for offences under this Act, not that the offences cannot be committed against seamen: *Kennedy v. Corrie*, [1891] 1 Q. B. 771.

In *Reg. v. Lynch*, [1898] 1 Q. B. 61, it was held that "seamen" here means "seamen" as defined by the Merchant Shipping Acts (17 & 18 Vict. c. 104, s. 2; 57 & 58 Vict. c. 60, s. 742); so that persons whose calling is the sea, but who are not actually engaged on board a ship, are punishable for offences under this Act.

Repeal.

17. On and after the commencement of this Act, there shall be Repeal of Acts.
repealed:—

I. The Act of the session of the thirty-fourth and thirty-fifth years of the reign of her present Majesty, chapter thirty-two, intituled "An Act to amend the criminal law relating to violence, threats, and molestation;" and

II. "The Master and Servant Act, 1867," and the enactments specified in the first schedule to that Act, with the exceptions following as to the enactments in such schedule, that is to say:

- (1) Except so much of sections one and two of the Act passed in the thirty-third year of the reign of King George the Third, chapter fifty-five, intituled "An Act to authorise justices of the peace to impose fines upon constables, overseers, and other peace or parish officers for neglect of duty, and on masters of apprentices for ill-usage of such their apprentice; and also to make provision for the execution of warrants of distress granted by magistrates," as relates to constables, overseers, and other peace or parish officers; and
- (2) Except so much of sections five and six of an Act passed in the fifty-ninth year of the reign of King George the Third, chapter ninety-two, intituled "An Act to enable justices of the peace in Ireland to act as such, in certain cases, out of the limits of the counties in which they actually are; to make provision for the execution of warrants of distress granted by them; and to authorise them to impose fines upon constables and other officers for neglect of duty, and on masters for ill-usage of their apprentices," as relates to constables and other peace or parish officers; and
- (3) Except the Act of the session of the fifth and sixth years of the reign of her present Majesty, chapter seven, intituled "An Act to explain the Acts for the better regulation of certain apprentices;" and
- (4) Except sub-sections one, two, three, and five of section sixteen of "The Summary Jurisdiction (Ireland) Act, 1851," relating to certain disputes between employers and the persons employed by them; and

III. Also there shall be repealed the following enactments making breaches of contract criminal and relating to the recovery of wages by summary procedure, that is to say :

- (a) An Act passed in the fifth year of the reign of Queen Elizabeth, chapter four, and intituled "An Act touching dyvers orders for artificers, labourers, servantes of husbandrye, and apprentices;" and
- (b) So much of section two of an Act passed in the twelfth year of King George the First, chapter thirty-four, and intituled "An Act to prevent unlawful combination of workmen employed in the woollen manufactures, and for better payment of their wages," as relates to departing from service and quitting or returning work before it is finished ; and
- (c) Section twenty of an Act passed in the fifth year of King George the Third, chapter fifty-one, the title of which begins with the words "An Act for repealing several laws relating to the manufacture of woollen cloth in the county of York," and ends with the words "for preserving the credit of the said manufactures at the foreign market;" and
- (d) An Act passed in the nineteenth year of King George the Third, chapter forty-nine, and intituled "An Act to prevent abuses in the payment of wages to persons employed in the bone and thread lace manufactory;" and
- (e) Sections eighteen and twenty-three of an Act passed in the session of the third and fourth years of her present Majesty, chapter ninety-one, intituled "An Act for the more effectual prevention of frauds and abuses committed by weavers, sewers, and other persons employed in the linen, hempen, union, cotton, silk, and woollen manufactures in Ireland, and for the better payment of their wages, for one year, and from thence to the end of the next session of Parliament;" and
- (f) Section seventeen of an Act passed in the session of the sixth and seventh years of her present Majesty, chapter forty, the title of which begins with the words "An Act to amend the laws," and ends with the words "workmen engaged therein;" and
- (g) Section seven of an Act passed in the session of the eighth and ninth years of her present Majesty, chapter one hundred and twenty-eight, and intituled "An Act to make further regulations respecting the tickets of work to be delivered to silk weavers in certain cases."

Provided that,—

- (1) Any order for wages or further sum of compensation in addition to wages made in pursuance of section sixteen of "The Summary Jurisdiction (Ireland) Act, 1851," may be enforced in like manner as if it were an order made by a court of summary jurisdiction in pursuance of the Employers and Workmen Act, 1875, and not otherwise; and
- (2) The repeal enacted by this section shall not affect—
 - (a) Anything duly done or suffered, or any right or liability acquired or incurred under any enactment hereby repealed; or

- (b) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; or
- (c) Any investigation, legal proceeding, or remedy in respect of any such right, liability, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not passed.

Application of Act to Scotland.

18. This Act shall extend to Scotland, with the modifications following: that is to say, ²

- (1) The expression “municipal authority” means the town council of any royal or parliamentary burgh, or the commissioners of police of any burgh, town, or populous place under the provisions of the General Police and Improvement (Scotland) Act, 1862, or any local authority under the provisions of the Public Health (Scotland) Act, 1867: Definitions.
- (2) The expression “The Summary Jurisdiction Act”^(m) means the Summary Procedure Act, 1864, and any Acts amending the same:
- (3) The expression “the court of summary jurisdiction” means the sheriff of the county or any one of his substitutes.

19. In Scotland the following provisions shall have effect in regard to the prosecution of offences, recovery of penalties, and making of orders under this Act:— Recovery of penalties in Scotland.

- (1) Every offence under this Act shall be prosecuted, every penalty recovered, and every order made at the instance of the lord advocate or of the procurator fiscal of the sheriff court:
- (2) The proceedings may be on indictment in the Court of Justiciary in Edinburgh, or on circuit, or in a sheriff court, or may be taken summarily in the sheriff court under the provisions of the Summary Procedure Act, 1864:
- (3) Every person found liable on conviction to pay any penalty under this Act shall be liable, in default of payment within a time to be fixed in the conviction, to be imprisoned for a term, to be also fixed therein, not exceeding two months, or until such penalty shall be sooner paid, and the conviction and warrant may be in the form of No. 3 of Schedule K. of the Summary Procedure Act, 1864:
- (4) In Scotland all penalties imposed in pursuance of this Act shall be paid to the clerk of the court imposing them, and shall by him be accounted for and paid to the Queen’s and Lord Treasurer’s Remembrancer, and be carried to the Consolidated Fund.

20. In Scotland it shall be competent to any person to appeal against any order or conviction under this Act to the next circuit court of justiciary, or where there are no circuit courts, to the High Court of Justiciary at Edinburgh, in the manner prescribed by and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of his Majesty King George the Second, chapter forty-three, in regard to appeals to circuit courts in matters criminal, as the same may be altered or amended by any Acts of Parliament for the time being in force. Appeal in Scotland as prescribed by 20 Geo. 2, c. 43.

(m) See Interpretation Act, 1889, s. 13, sub-ss. (10), (8).

Application of Act to Ireland.

Application
to Ireland.

21. This Act shall extend to Ireland with the modifications following, that is to say:—

The expression “The Summary Jurisdiction Act” (*n*) shall be construed to mean, as regards the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district; and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act amending the same:

The expression “court of summary jurisdiction” (*o*) shall be construed to mean any justice or justices of the peace, or other magistrate to whom jurisdiction is given by the Summary Jurisdiction Act:

The court of summary jurisdiction when hearing and determining complaints under this Act, shall in the police district of Dublin metropolis be constituted of one or more of the divisional justices of the said district, and elsewhere in Ireland of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions:

The expression “municipal authority” shall be construed to mean the town council of any borough for the time being, subject to the Act of the session of the third and fourth years of the reign of her present Majesty, chapter one hundred and eight, entitled “An Act for the Regulation of Municipal Corporations in Ireland,” and any commissioners invested by any general or local Act of Parliament, with power of improving, cleansing, lighting, or paving any town or township.

TRADE DISPUTES ACT, 1906 (6 Edw. 7, c. 47).

“Prior to the decision in *Tuff Vale Railway Co. v. Amalgamated Society of Railway Servants*, [1901] A. C. 426, it was doubtful whether a registered trade union could sue or be sued in its registered name. The House decided that it could be so sued in an action for an injunction against its agents”: per Lord Lindley in *Yorkshire Miners’ Assoc. v. Hoorden*, [1905] A. C. 256, 280. It was also there decided (i) that a trade union can be sued, in a proper case, in a representative action; and (ii) that the funds of a trade union can be reached, by means of the joinder of the trustees (see per Lord Lindley, [1901] A. C. 443), to satisfy a claim for damages for torts committed by the agents of the trade union. It was, very largely, to overrule this decision that the Trade Disputes

(*n*) Interpretation Act, 1889, s. 13, sub-ss. (10), (9).

(*o*) *Ibid.* sub-s. (11).

Act, 1906, was passed. That object is attained by sect. 4 of the Act. That section is quite general in its terms; and is not, like the other sections, restricted to cases of "trade disputes." It simply prohibits actions in tort against trade unions. Such actions, therefore, as *Giblan v. National Amalgamated Labourers' Union, &c.*, [1903] 2 K. B. 600; *Glamorgan Coal Co. v. South Wales Miners' Federation*, [1905] A. C. 239; *Denaby and Cadeby Main Collieries, Ltd. v. Yorkshire Miners' Assoc.*, [1906] A. C. 384; and the *Taff Vale Case*, *ubi sup.*, are now, as against trade unions, not maintainable; but, on the other hand, such actions as *Wolfe v. Matthews* (1882), 21 Ch. D. 194, and *Howden v. Yorkshire, &c.*, [1905] A. C. 256, brought by members of the trade union to restrain the payment of money in breach of the contract, contained in the rules, between the union and its members would still lie. It is difficult to understand sub-sect. (2) of sect. 4. The liability of trustees under sect. 9 of the Trade Union Act, 1871, is confined to cases of *property*; impliedly, therefore, they are not liable to be sued in tort. This is the view taken by Farwell, J., in the *Taff Vale Case*, [1901] A. C. 426, where he says (p. 431): "Sections 8 and 9 of the Act of 1871 expressly provide for actions in respect of property being brought by and against the trustees, and this express intention impliedly excludes such trustees from being sued in tort." And see Lord Lindley's speech in the same case for his view as to the position of the trustees in an action of tort (*ibid.*, pp. 443, 445). Whatever be the meaning of this sub-section, it would not appear in any way to qualify the general immunity created by sub-sect. (1).

By sects. 1, 2 and 3, great changes are effected in the law as applied to trade disputes.

"Trade dispute" is thus defined by sect. 5, sub-sect. (3): "In this Act and in the Conspiracy and Protection of Property Act, 1875, the expression 'trade dispute' means any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour, of any person, and the expression 'workmen' means all persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arises; and, in section three of the last-mentioned Act, the words 'between employers and workmen' shall be repealed."

In *Quinn v. Leatham*, [1901] A. C. 495, the House of Lords held that the words "trade dispute between 'employers and workmen' in sect. 3 of the Conspiracy and Protection of Property Act,

1875, do not include a dispute on trade union matters between workmen who are members of a trade union and an employer of non-union workmen who refuses to employ members of a trade union." Such a dispute comes directly within this definition, and therefore would now receive the protection of both Acts.

Suppose this state of facts:—Some members of a trade union in employment at a certain colliery are in arrears with their subscriptions to their union. Other members of the trade union employed at that colliery, in pursuance of a resolution by ballot taken at the instigation of a trade union agent, give notice to terminate their contracts in order to secure the payment of their arrears by the defaulting members, or, failing that, the dismissal of those members from their employment. No violence, intimidation, or other illegal means is employed. The defaulters are dismissed with, or without (*vide* sect. 3), due notice. It is submitted that this is a "trade dispute" within the definition, so as to give the agent and the men so giving notice the protection of this Act, whether as individuals, or as acting in combination, against any proceedings by the employer or by the defaulting members so dismissed. Doubtless, originally and in itself, it is not a "trade dispute"; but the ballot is taken and the strike declared only because the master will not dismiss the men in arrear, and because the unionists will not work with them. Dismissal would solve the difficulty; so, it may be said, would payment of the arrears; but the dismissal of the defaulters has become an element in the dispute. Any other application of the definition would appear to be a strained limitation of the words—"connected with the employment or non-employment of any person." Had the words been "having its origin in," or "having for its sole object," the employment, &c., &c., it might have been different. In the case supposed, the trade union would, in any event, be protected by sect. 4.

The restriction of "trade dispute," implied, rather than expressed, in the judgments in *Quinn v. Leatham*, *l. c.*—(see the head-note to that case)—to disputes between an employer and his own workmen is also removed by this definition.

Section 1 is very far-reaching. It has again and again been laid down that what is not actionable, if done by one, may become so if done by many in combination: see notes (*f*) and (*i*) at p. 575, *supra*. This section abrogates that principle in the application of the law to trade disputes. It enacts the view of the law propounded by Pales, C. B., in *Kearney v. Lloyd* (1890), 26 L. R. Ir. 268, and in his dissenting judgment in *Leatham v. Craig*, [1899] 2 I. R. at

p. 681, followed by Darling, J., in *Huttley v. Simmons*, [1898] 1 Q. B. 181, and dissented from by the House of Lords in *Quinn v. Leatham*, [1901] A. C. 495; see, particularly, the speech of Lord Halsbury. See note (i) at p. 575, *supra*.

The ambit of sect. 1 is considerably widened by the provisions of sect. 3. The effect of these two sections, read together, is this: The mere inducement of some other person to break a contract of employment, or the mere interference with the trade, business, or employment of some other person or with the right of some other person to dispose of his capital or his labour as he wills, though the breach of contract or the interference be effected by acts done in pursuance of a combination, shall not be actionable, provided that the acts in question have been done in contemplation or furtherance of a trade dispute; that is to say, the last word of sect. 1—"actionable"—means actionable whether under this Act or apart from it. Had sect. 3 to be excluded in considering, for the purposes of sect. 1, the actionability of the act apart from combination, the words "apart from this Act" would have been added. It is submitted that this is the right way of reading these sections. If the clause as to inducing breach of contract be excised, sect. 3 may be said to give legislative effect to the view enunciated by Lord Herschell in *Allen v. Flood*, [1898] A. C. 1, 132—141. The provisions of these sections render actions on such facts as were proved in *Temperton v. Russell*, [1893] 1 Q. B. 715, and *Quinn v. Leatham*, *ubi sup.*, unmaintainable.

With regard to sect. 2, see sect. 7 of the Conspiracy and Protection of Property Act, 1875, and the note on "Picketing" there, and foot-note (c) at p. 690. Such injunctions as those in *Lyons v. Wilkins* ([1896] 1 Ch. at p. 832, per Kay, L. J.; and [1899] 1 Ch. at p. 258, per Byrne, J.) and the *Taff Vale Case* ([1901] A. C. 426) could not now be granted, having regard to the last clause of sub-sect. (1). Probably "peaceful persuasion" will be the point of difficulty in this section; and, indeed, the application of sects. 1 and 3 will largely depend on the views of juries as to "coercion" or "intimidation," which are still unlawful (p). It may be noted that this Act does not abrogate the common law of nuisance looked at from the point of view of the person whose premises are beset (see *Lyons v. Wilkins*, [1899] 1 Ch. 255) (p), or the criminal law which prohibits obstruction of a highway by a crowd.

(p) Always remembering the immunity of trade unions under sect. 4.

TRADE DISPUTES ACT, 1906 (6 EDW. 7, c. 47).

An Act to provide for the regulation of Trades Unions and Trade Disputes.

Amendment
of law of
conspiracy in
the case of
trade dis-
putes.
38 & 39 Vict.
c. 86.

1. The following paragraph shall be added as a new paragraph after the first paragraph of section three of the Conspiracy and Protection of Property Act, 1875:—

“An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable” (*g*).

Peaceful
picketing.

2.—(1) It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working (*r*).

(2) Section seven of the Conspiracy and Protection of Property Act, 1875, is hereby repealed from “attending at or near” to the end of the section.

Removal of
liability for
interfering
with another
person's
business, &c.

3. An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills (*g*).

Prohibition
of actions of
tort against
trade unions.

4.—(1) An action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court (*s*).

34 & 35 Vict.
c. 31.

(2) Nothing in this section shall affect the liability of the trustees of a trade union to be sued in the events provided for by the Trade Union Act, 1871, section nine, except in respect of any tortious act committed by or on behalf of the union in contemplation or in furtherance of a trade dispute (*s*).

Short title
and construc-
tion.

5.—(1) This Act may be cited as the Trade Disputes Act, 1906, and the Trade Union Acts, 1871 and 1876, and this Act may be cited together as the Trade Union Acts, 1871 to 1906.

(2) In this Act the expression “trade union” has the same meaning as in the Trade Union Acts, 1871 and 1876, and shall include any combination as therein defined, notwithstanding that such combination may be the branch of a trade union.

(3) In this Act and in the Conspiracy and Protection of Property Act, 1875, the expression “trade dispute” means any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour, of any person, and the expression “workmen” means all persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arises; and, in section three of the last-mentioned Act, the words “between employers and workmen” shall be repealed (*t*).

(*g*) See remarks on pp. 608, 609.

(*r*) See remarks on preceding page.

(*s*) See remarks on pp. 606, 607.

(*t*) See remarks on pp. 607, 608.

CHAPTER XIII.

EMPLOYERS AND WORKMEN ACT, 1875.

38 & 39 VICT. c. 90.

ARRANGEMENT OF CLAUSES.

Preliminary.

Clauses.

1. Short title.
2. Commencement of Act.

PART I.

Jurisdiction—Jurisdiction of County Court.

3. Power of county court as to ordering of payment of money, set-off, and rescission of contract, and taking security.

Court of Summary Jurisdiction.

4. Jurisdiction of justices in disputes between employers and workmen.
5. Jurisdiction of justices in disputes between masters and apprentices.
6. Powers of justices in respect of apprentices.
7. Order against surety of apprentice, and power to friend of apprentice to give security.

PART II.

Procedure.

8. Mode of giving security.
9. Summary proceedings.

PART III.

*Definitions and Miscellaneous.**Definitions.*

10. Definitions: "Workman," "The Summary Jurisdiction Act."
11. Set-off in case of factory workers.

Application.

12. Application to apprentices.

Saving Clause.

13. Saving of special jurisdiction, and seamen.

PART IV.

Application of Act to Scotland.

Clauses.

14. Application to Scotland. Definitions.

PART V.

Application of Act to Ireland.

15. Application to Ireland.

An Act to enlarge the Powers of County Courts in respect of Disputes between Employers and Workmen, and to give other Courts a limited Civil Jurisdiction in respect of such Disputes.

Preliminary.

Short title.

1. This Act may be cited as the Employers and Workmen Act, 1875.
2. [*Commencement of Act. Repealed by Statute Law Revision (No. 2) Act, 1893.*]

PART I.

Jurisdiction—Jurisdiction of County Court.

Power of county court as to ordering of payment of money, set-off, and rescission of contract and taking security.

3. In any proceeding before a county court in relation to any dispute between an employer and a workman^(a) arising out of or incidental to their relation as such (which dispute^(b) is hereinafter referred to as a dispute under this Act) the court may, in addition to any jurisdiction it might have exercised if this Act had not passed, exercise all or any of the following powers; that is to say,

- (1) It may adjust and set off the one against the other all such claims on the part either of the employer or of the workman, arising out of or incidental to the relation between them, as the court may find to be subsisting, whether such claims are liquidated or unliquidated, and are for wages, damages, or otherwise^(c); and,

(a) The Act does not define "employer." As to "workman," see sect. 10.

(b) This includes a claim for damages and loss caused by a workman leaving his employment without giving previous notice to his employer, though before summons no claim had been made: *Clemson v. Hubbard* (1876), L. R. 1 Ex. D. 179; or a mere difference as to what, upon the true construction of the contract, was the rate of wages: *Charles v. Mortgagees of Plymouth Waterworks* (1890), 60 L. J. M. C. 20.

(c) As to claims by master against

infant, see *Leslie v. Fitzpatrick* (1877), 3 Q. B. D. 229. The following cases bear upon this section: *Routledge v. Husop* (1860), 29 L. J. M. C. 90. (Judgment in action by servant in County Court for a wrongful dismissal is a bar to proceedings before justices to recover quarter's wages.) *Millett v. Coleman* (1873), 44 L. J. Q. B. 194. (Summons for wages, heard by justices under the Master and Servant Act, 1867, dismissed; plaintiffs then issued plaints for the same in County Courts; judgment for the defendant on the grounds that the matter was *res judicata*.)

- (2) If, having regard to all the circumstances of the case, it thinks it just to do so, it may rescind (*d*) any contract between the employer and the workman upon such terms as to the apportionment of wages or other sums due thereunder, and as to the payment of wages or damages, or other sums due, as it thinks just; and,
- (3) Where the court might otherwise award damages for any breach of contract it may, if the defendant be willing to give security to the satisfaction of the court for the performance by him of so much of his contract as remains unperformed, with the consent of the plaintiff, accept such security, and order performance of the contract accordingly, in place either of the whole of the damages which would otherwise have been awarded, or some part of such damages.

The security shall be an undertaking by the defendant and one or more surety or sureties that the defendant will perform his contract, subject on non-performance to the payment of a sum to be specified in the undertaking.

Any sum paid by a surety on behalf of a defendant in respect of a security under this Act, together with all costs incurred by such surety in respect of such security, shall be deemed to be a debt due to him from the defendant; and where such security has been given in or under the direction of a court of summary jurisdiction, that court may order payment to the surety of the sum which has so become due to him from the defendant.

A "dispute" has arisen within this section even if the refusal to work is solely on the part of assistants engaged by the "workman" (see sect. 10, *infra*) to help him in the work he has contracted to do: *Granger v. Apsey* (1880), 6 Q. B. D. 182.

For the form of the "security," see sect. 8 and the note thereon, *infra*.

Proceedings under this section are governed by the general practice of the Court. See the County Court Rules, 1903 and 1904.

Court of Summary Jurisdiction.

4. A dispute under this Act between an employer and a workman may be heard and determined by a court of summary jurisdiction, and such court, for the purposes of this Act, shall be deemed to be a court of civil jurisdiction, and in a proceeding in relation to any such dispute the court may order payment of any sum which it may find to be due as wages, or damages, or otherwise, and may exercise all or any of the powers by this Act conferred

Jurisdiction of justices in disputes between employers and workmen.

Hindley v. Haslam (1878), 3 Q. B. D. 481. (Appellant employed by respondents as a spinner; discharged for neglecting his work. The respondents refusing to pay wages in lieu of notice, appellant took proceedings against respondents in the County Court. No counter-claim or set-off filed or set up, but evidence was produced to show appellant guilty of negligence. Verdict for 3*l.* 10*s.* Held, that the respondents were not precluded from preferring a claim before the justices under sects. 3 and 4, for wrongfully and negligently damaging materials.)

Upon a complaint under 20 Geo. II. c. 19, by an artificer for wages due by his employer, the justices were at liberty to take into account the quality of the work, and to make a deduction from the wages for bad workmanship: *Sharp v. Hainsworth* (1862), 32 L. J. M. C. 33.

(*d*) Under this section the Scotch Courts have held that it is competent to disregard arbitration clauses in contracts of service: *Wilson v. Glasgow Tramways Co.* (1878), 5 R. 981; *Glasgow Tramway Co. v. Dempsey* (1877), 3 Coup. 440; but see *London Tramways Co. v. Bailey* (1877), 3 Q. B. D. 127.

on a county court: provided that in any proceeding in relation to any such dispute the court of summary jurisdiction—

- (1) Shall not exercise any jurisdiction where the amount claimed exceeds ten pounds; and
- (2) Shall not make an order for the payment of any sum exceeding ten pounds, exclusive of the costs incurred in the case; and
- (3) Shall not require security to an amount exceeding ten pounds from any defendant or his surety or sureties.

For rules of procedure and forms see the “Employers and Workmen Rules, 1886,” printed *infra*.

Sect. 11 of Jervis’s Act (11 & 12 Vict. c. 43), which prescribes a limit of six months for bringing a complaint, does not apply to proceedings under this Act: *Charles v. Mortgagees of Plymouth Waterworks* (1890), 60 L. J. M. C. 20.

Disputes
between
masters and
apprentices.

5. Any dispute between an apprentice to whom this Act applies (*dd*) and his master, arising out of or incidental to their relation as such (*e*) (which dispute is hereinafter referred to as a dispute under this Act), may be heard and determined by a court of summary jurisdiction.

Powers of
justices in
respect of
apprentices.

6. In a proceeding before a court of summary jurisdiction in relation to a dispute under this Act between a master and an apprentice, the court shall have the same powers as if the dispute were between an employer and a workman, and the master were the employer and the apprentice the workman, and the instrument of apprenticeship a contract between an employer and a workman, and shall also have the following powers:

- (1) It may make an order directing the apprentice to perform his duties under the apprenticeship; and,
- (2) If it rescinds the instrument of apprenticeship it may, if it thinks it is just so to do, order the whole or any part of the premium paid on the binding of the apprentice to be repaid.

Where an order is made directing an apprentice to perform his duties under the apprenticeship, the court may, from time to time, if satisfied after the expiration of not less than one month from the date of the order that the apprentice has failed to comply therewith, order him to be imprisoned for a period not exceeding fourteen days.

The jurisdiction over apprentices is limited by sect. 12, *infra*.
As to commitment to prison, see Rule 2, *infra*.

Order against
surety of
apprentice,
and power to
friend of
apprentice
to give
security.

7. In a proceeding before a court of summary jurisdiction in relation to a dispute under this Act between a master and an apprentice, if there is any person liable, under the instrument of apprenticeship, for the good conduct of the apprentice, that person may, if the court so direct, be summoned in like manner as if he were the defendant in such proceeding to attend on the hearing of the proceeding, and the court may, in addition to or in substitution for any order which the court is authorised to make against the apprentice, order the person so summoned to pay damages for any breach of

(*dd*) See sect. 12, *infra*.

(*e*) Under 4 Geo. IV. c. 34, s. 2, magistrates had jurisdiction, though summons taken out after relation of master and apprentice had ceased; *R. v. Proud* (1867), L. R. 1 C. C. R. 71.

the contract of apprenticeship to an amount not exceeding the limit (if any) to which he is liable under the instrument of apprenticeship.

The court may, if the person so summoned, or any other person, is willing to give security to the satisfaction of the court for the performance by the apprentice of his contract of apprenticeship, accept such security instead of or in mitigation of any punishment which it is authorised to inflict upon the apprentice.

PART II.

Procedure.

8. A person may give security under this Act in a county court or court of summary jurisdiction by an oral or written acknowledgment in or under the direction of the court of the undertaking or condition by which and the sum for which he is bound, in such manner and form as may be prescribed by any rule for the time being in force, and in any case where security is so given, the court in or under the direction of which it is given may order payment of any sum which may become due in pursuance of such security.

Mode of
giving
security.

The Lord Chancellor may at any time after the passing of this Act, and from time to time make, and when made, rescind, alter, and add to rules with respect to giving security under this Act.

The following is the form of undertaking prescribed by the County Court Rules, 1903:—

432.

Undertaking in writing by Defendant to perform Contract.

The Employers and Workmen Act, 1875.

[*Not to be printed.*]

In the County Court of . . . holden at . . .

(Seal)

Between A. B., plaintiff,
and
C. D., defendant.

Whereas it has been found by this Court, on the . . . day of . . . 19 . . . , that the defendant had broken the contract for the breach of which he was summoned.

And whereas the Court would have awarded to the plaintiff the sum of £ . . . by way of damages suffered by him in consequence of such breach, and would have ordered the defendant to have paid such sum, but that the defendant was willing to give security for the performance by him of so much of the contract as remains unperformed.

Now, therefore, I the undersigned defendant and we the undersigned sureties [*or the undersigned surety*] do undertake that the said defendant will perform so much of the said contract as remains unperformed, that is to say, [*here set out so much of the contract as remains to be performed*].

And I, the said defendant, and we [*or I*], the said sureties [*or surety*], hereby severally acknowledge ourselves bound to forfeit to A. B., the plaintiff, the sum of . . . pounds and . . . shillings in case the said defendant fails to perform what he has hereby undertaken to perform.

Signed (*when not taken orally*) C. D., defendant.

E. F. }
G. H. } sureties.

Taken [*orally*] before me this . . . day of . . . 19 . . .

Registrar.

NOTE.—*If the undertaking is given orally, strike out the words "undersigned" where they occur, and insert the word "orally" after "taken."*

For the form of "undertaking" in the summary jurisdiction Court, see Form No. 3, printed at p. 624, *infra*.

Summary
proceedings.

9. Any dispute or matter in respect of which jurisdiction is given by this Act to a court of summary jurisdiction shall be deemed to be a matter on which that court has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Act, but shall not be deemed to be a criminal proceeding; and all powers by this Act conferred on a court of summary jurisdiction shall be deemed to be in addition to and not in derogation of any powers conferred on it by the Summary Jurisdiction Act, except that a warrant shall not be issued under that Act for apprehending any person other than an apprentice for failing to appear to answer a complaint in any proceeding under this Act, and that an order made by a court of summary jurisdiction under this Act for the payment of any money shall not be enforced by imprisonment except in the manner and under the conditions by this Act provided; and no goods or chattels shall be taken under a distress ordered by a court of summary jurisdiction which might not be taken under an execution issued by a county court.

A court of summary jurisdiction may direct any sum of money, for the payment of which it makes an order under this Act, to be paid by instalments, and may from time to time rescind or vary such order.

Any sum payable by any person under the order of a court of summary jurisdiction in pursuance of this Act, shall be deemed to be a debt due from him in pursuance of a judgment of a competent court within the meaning of the fifth section of the Debtors Act, 1869, and may be enforced accordingly (*f*); and as regards any such debt a court of summary jurisdiction shall be deemed to be a court within the meaning of the said section.

The Lord Chancellor may at any time after the passing of this Act, and from time to time make, and when made, rescind, alter, and add to, rules for carrying into effect the jurisdiction by this Act given to a court of summary jurisdiction, and in particular for the purpose of regulating the costs of any proceedings in a court of summary jurisdiction, with power to provide that the same shall not exceed the costs which would in a similar case be incurred in a county court, and any rules so made, in so far as they relate to the exercise of jurisdiction under the said fifth section of the Debtors Act, 1869, shall be deemed to be prescribed rules within the meaning of the said section.

See Rules printed *infra*.

PART III.

Definitions and Miscellaneous.

Definitions.

Definitions: 10. In this Act—

‘Workman.’

The expression “workman” does not include a domestic or menial servant, but save as aforesaid, means any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise

(*f*) In *Cutler v. Turner* (1874), L. R. 9 Q. B. 502, the Court held there was a right under the repealed Master and Servant Act, 1867 (30 & 31 Vict. c. 141), to recover a sum as compensation for

breach of contract of service, though the appellant had been previously ordered to fulfil the same contract, and to be imprisoned for not doing so. See *Evans v. Wills* (1876), 45 L. J. C. P. 420.

engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing (*g*), and be a contract of service or a contract personally to execute any work or labour (*h*).

This definition is incorporated by reference in the Truck Acts (see 50 & 51 Vict. c. 46, s. 2) and the Employers' Liability Act, 1880.

It excludes "menial servants," *i.e.*, those "whose main duty is to do actual bodily work for the personal comfort, convenience, and luxury of the master, his servants and his guests, and who for this purpose become part of the master's

(*g*) This does away with the effect of *Banks v. Crosslands* (1874), L. R. 10 Q. B. 97: but the section does not affect the Statute of Frauds.

(*h*) Assistance in construing this section may be obtained from the chief decisions under the repealed Act 4 Geo. IV. c. 34, which applied to any servant in husbandry, or "any artificer, calico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person." It did not contain the words "contract personally to execute any work or labour," or their equivalent; and the Courts required proof of service, or of a contract to serve. WITHIN THE ACT (4 Geo. IV. c. 34). *Ex parte Ormerod* (1844), 13 L. J. N. S. M. C. 73; 1 D. & L. 825. (A designer who contracted to serve a calico printer for a term of years, and whose duty it was to draw patterns, to be afterwards engraved on copper rollers, "an artificer.") *In re Bailey* (1854), 3 E. & B. 607; 23 L. J. N. S. M. C. 161. (Contract to serve as a collier until a month's notice on either side; wages to be 1s. 10d. per ton of coals, paid monthly; evidence of obligation to serve personally.) *Ex parte Gordon* (1855), 25 L. J. N. S. M. C. 12; 3 W. R. 568. (A journeyman tailor working with others for a master tailor on the premises of the latter; paid at a certain price per garment. The contract did not extend beyond the job, but, while executing it, the former was bound to work exclusively for his employer.) *Willett v. Boote* (1860), 30 L. J. N. S. M. C. 6; 6 H. & N. 26. (B., a potter, engaged W. to work for him as a biscuit oven-placer, at daily wages for a year. By another agreement of the same date, B. engaged R. to work for him by piecework, for the same time, as biscuit oven-fireman. R. paid W. his wages out of the amount earned by R. for piece-work. A contract of master and servant subsisted between B. and W., notwithstanding the fact that payments of wages were made to W. by R.) *Lawrence v. Todd*

(1863), 14 C. B. N. S. 554; 32 L. J. M. C. 238. (T., with six other artisans, agreed under a written contract to complete an iron ship; they were to work exclusively for the appellant, but were at liberty to employ skilled and unskilled workmen to assist them.) *Whiteley v. Arncliffe* (1864), 13 W. R. 144. (A stuff-finisher of Italian goods, who worked manually for weekly wages and a commission, but who directed other workmen.) NOT WITHIN THE ACT. —*Hardy v. Ryle* (1829), 9 B. & C. 603. (Contract to weave certain pieces of silk goods.) *Lancaster v. Greaves* (1829), 9 B. & C. 628. (A. contracted to build a wall for a certain price, and within a certain time.) *Ex parte Johnstone* (1839), 7 Dow. 702. (A contract to "print certain pieces of woollen cotton goods.") *Darvis v. Berwick* (1861), 3 E. & E. 549; 30 L. J. M. C. 84. (A person engaged in keeping the accounts of a farm, setting the men to work, and lending a helping hand when wanted, &c., not a "servant in husbandry," or "other person.") Under the repealed 20 Geo. II. c. 19 (which gave jurisdiction to justices in disputes between masters and mistresses, and servants in husbandry, who shall be hired for one year or longer (extended by 31 Geo. II. c. 11, s. 3, to all servants in husbandry, though hired for less time than a year), or between masters and mistresses and artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, and other labourers employed for any certain time or in any other manner), it was held that a labourer employed to "dig and stean a well" for cattle, who was to be paid by the foot, and who employed another to assist him, was within the Act. *Lowther v. Radnor* (1806), 8 East, 113. So in *Bramwell v. Pennick* (1827), 7 B. & C. 536, a person employed by an attorney to keep possession of goods seized under a *fi. fa.* In *Ex parte Hughes* (1854), 23 L. J. N. S. M. C. 138, a dairymaid at a farm, who had also to keep house and cook for men-servants, was held to be within the Act.

residential or quasi-residential establishment": *Pearce v. Lansdowne* (1893), 62 L. J. Q. B. 441, quoting Roberts and Wallace on the Employers' Liability Act.

Six classes of workmen are specifically mentioned, and the definition applies only to persons engaged in manual labour *ejusdem generis* with such six classes: *Cook v. North Metropolitan Tramways Co.* (1887), 18 Q. B. D. 683, per A. L. Smith, J., at p. 684.

"Labourer" may be defined as "a man who digs and does any labour of that kind with his hands": *Morgan v. London General Omnibus Co.* (1884), 53 L. J. Q. B. 353. Whether a person is a "servant in husbandry" depends on the principal employment of the person in question: *Ex parte Hughes* (1854), 23 L. J. M. C. 138; *Davies v. Berwick* (1861), 30 L. J. M. C. 84.

"Journeyman" means, in popular parlance, a qualified artisan, who, having served his apprenticeship, works for another.

"Artificer" and "handicraftsman" are terms now little used. Some of the decisions on older statutes, where those terms occur, may be usefully referred to: *vide* note (h). In the Truck Act, 1831, "artificer" was the term employed; by sect. 2 of the Truck Act, 1887, it is to be construed so as to include every "workman" embraced in this definition.

In all cases "manual labour" is the test: *Grainger v. Agnaley* (1880), 6 Q. B. D. 182, per Lindley, J., at p. 189; *Morgan v. London General Omnibus Co.* (1884), 13 Q. B. D. 832 (C. A.). Nor does the definition extend to a large class of workmen, who are only occasionally engaged in manual work, or whose occupation cannot be described as "labour." The following have been held to be outside the definition:—Omnibus conductor (*Morgan v. London General Omnibus Co.*, *ibi sup.*); tram-car driver (*Cook v. North Met. Tram. Co.*, *ibi sup.*); goods train guard (*Hunt v. Great Northern Ry. Co.*, [1891] 1 Q. B. 601); grocer's assistant (*Bound v. Lawrence*, [1892] 1 Q. B. 226; a hairdresser (*Reg. v. Justices of Louth*, [1900] 2 I. R. 714). On the other hand, a trolly-driver who had to unload the trolly (*Yarmouth v. France* (1888), 19 Q. B. D. 647); a seamstress who worked a sewing-machine and ironed materials (*Maynard v. Robinson* (1903), 19 T. L. R. 492); and the driver of a motor-omnibus, who has to do such repairs, when out with the omnibus, as he is able to do (*Smith v. Associated Omnibus Co.*, [1907] 1 K. B. 916), are within it.

Servants of the Crown are outside the definition. For the purposes of liability for their servants' negligence the Corporation of the Trinity House is not a Government department: *Gilbert v. Corporation of Trinity House* (1886), 17 Q. B. D. 795.

The workman must either "have entered into" or "be working under a contract with" the employer. Consequently, a workman employed solely by an independent contractor is *quâ* the principal contractee outside the definition: *Marrow v. Flimby, &c.*, [1898] 2 Q. B. 588; *Fitzpatrick v. Evans*, [1902] 1 K. B. 505, cases in which the employees of a pit-sinking contractor sued the mine-owner under the Employers' Liability Act, 1880; and see those cases as to the meaning of "working under a contract with the employer."

It has been held that "butties" in collieries are not independent contractors so as to make their men other than workmen in the employ of the proprietor: *Brown v. Butterley Coal Co.* (1885), 53 L. T. 964. As to spinners who are assisted by "piecers" and "creelers" see *Varley v. Birby* (1884), 20 Sol. Jo. 467.

A person may be a "workman," though he employs and pays others to assist him, in the manual labour he is engaged to do: *Grainger v. Agnaley* (1880), 6 Q. B. D. 182. And see that case as to the meaning of "a contract personally to execute work or labour."

Certain lace-clippers took the lace home; they did not work under the defendants' control; they might do the clipping themselves, engage others to do it, or return the lace unclipped, as they chose: *Held* (following *Ingram v. Barnes* (1857), 7 E. & B. 115, 132, and *Pillar v. Lyvri Coal Co.* (1869), L. R. 4 C. P. 752), that as the clippers were not bound by their contract to execute the work or any part of it themselves, they were not "workwomen" within the definition: *Squire v. Midland Lace Company*, [1905] 2 K. B. 448.

The expression "the Summary Jurisdiction Act" means (i).

The expression "court of summary jurisdiction" means (i).

(i) These definitions are repealed by S. L. R. (No. 2) Act, 1893. and are replaced by those given in sect. 13, sub-

sects. (10) and (11) of the Interpretation Act, 1889.

Nothing in this section contained shall restrict the jurisdiction of the Lord Mayor or any alderman of the city of London, or of any metropolitan police or stipendary magistrate in respect of any act or jurisdiction which may now be done or exercised by him out of court.

11. In the case of a child, young person, or woman subject to the provisions of the Factory Acts, 1833 to 1874 (*k*), any forfeiture on the ground of absence or leaving work shall not be deducted from or set off against a claim for wages or other sum due for work done before such absence or leaving work, except to the amount of the damage (if any) which the employer may have sustained by reason of such absence or leaving work (*l*).

Set-off in case of factory workers.

Application.

12. This Act in so far as it relates to apprentices shall apply only to an apprentice to the business of a workman as defined by this Act upon whose binding either no premium is paid, or the premium (if any) paid does not

Application to apprentices.

(*k*) Now repealed; and replaced by the Factory and Workshop Act, 1901 (1 Edw. VII. c. 22). See Interpretation Act, 1889, s. 38, sub-s. (1).

(*l*) See as to forfeiture of wages the following cases: *Walsh v. Walley and another* (1874), L. R. 9 Q. B. 367; 43 L. J. Q. B. 102; (Plaintiff, a weaver, and weekly servant, whose wages depended upon the number of pieces which he wove. The wages were ascertained at noon on Thursday, and paid next Saturday. The rules under which he worked required fourteen days' notice before leaving; and persons leaving without notice were to forfeit wages due. 15s. were ascertained as due on Thursday, April 25th, 1872, at noon; the plaintiff worked on the 26th, and earned 7s., and then left without notice. *Held*, that the plaintiff had forfeited the 15s. and 7s. *Willis v. Thorp* (1875), L. R. 10 Q. B. 383. *Saunders v. Whittle* (1876), 33 L. T. N. S. 816; 24 W. R. 406. (Plaintiff hired by the week; his wages 7d. an hour, payable every Saturday at noon. The full week consisted of fifty-four and a half hours, ending at 5.30 p.m. on Friday. Overtime paid at the same rate. Engagement determinable by a week's notice on either side. Plaintiff left without notice on Friday at noon before the week had ended. He had worked fifty-seven hours, including overtime, since the previous Friday. *Held*, that the plaintiff could not recover wages for current week on the ground that he was engaged by the week, though his wages were computed by the hour.) See also *Taylor v. Laird* (1856), 1 H. & N. 266; *Button v. Thompson* (1869), L. R. 4 C. P. 330; *Gregson v. Watson* (1876), 34 L. T. N. S.

143; (A factory winder, paid on Saturday for the sets which she had wound off during the preceding week, ending Wednesday night, absented herself from work on Saturday and Monday, after working Thursday and Friday, and doing work to the value of 3s. 7d., and did not return. By one of the rules of the factory, fourteen days' notice was required, and all persons leaving without notice were to forfeit the whole of the wages to which they would otherwise be entitled. The County Court judge assessed the damages at 3s., and found that the hiring was a weekly hiring; held that there were no wages or sum due, the hiring being weekly, and the servant having left without notice.) *Warburton v. Heyworth* (1880), 6 Q. B. D. 1; (A factory weaver, paid by the piece, all work being booked up at three o'clock on Wednesday afternoon in each week, and paid for on Saturday. The cuts which she had completed were, in accordance with the practice of the factory, booked on Wednesday; the value of the cuts, 13s. 4d. She returned to her work on Wednesday for a quarter of an hour, and then left without giving notice. By the rules of the factory, fourteen days' notice was necessary, on pain of forfeiture of wages. The justices found that the hiring was weekly. But the Court of Appeal was of opinion that there was not a weekly hiring; that a sum became due as each piece was finished; and that, as there was no damage, the appellant was entitled to recover in a claim for wages.) *Parkin v. South Hetton Coal Co.* (1907), 23 T. L. R. 408. See notes on *Cutler v. Powell*, Sm. L. C. vol. ii. p. 1; and see pp. 119 *et seq.*, *supra*.

exceed twenty-five pounds, and to an apprentice bound under the provisions of the Acts relating to the relief of the poor.

"Apprentice to the business of" means "learning the business of," &c. "Of" indicates the character not of the proprietor of the business, but of the business learnt. See Austin on Apprentices, p. 88.

Saving Clause.

Saving of
special juris-
diction and
seamen.

13. Nothing in this Act shall take away or abridge any local or special jurisdiction touching apprentices.

This Act shall not apply to seamen or to apprentices to the sea service.

The words in italics were repealed by the Merchant Seamen (Payment of Wages and Rating) Act, 1880 (43 & 44 Vict. c. 16), s. 11, which enacts—"The thirteenth section of the Employers and Workmen Act, 1875, shall be repealed in so far as it operates to exclude seamen and apprentices to the sea service from the said Act, and the said Act shall apply to seamen and apprentices to the sea service accordingly; but such repeal shall not, in the absence of any enactment to the contrary, extend to or affect any provision contained in any other Act of Parliament passed or to be passed whereby 'workman' is defined by reference to the persons to whom the Employers and Workmen Act, 1875, applies."

"Seaman" in this section means "seaman" as defined by sect. 2 of the Merchant Shipping Act, 1854: *Corbett v. Pearce*, [1904] 2 K. B. 422.

A vessel, not propelled by oars, is not the less a "ship" within the meaning of the Merchant Shipping Act, 1854, because she is navigated only on a tidal river: *Ibid.*

The plaintiff was one of a crew of two hands employed on board a sprit-sail barge to navigate her in the estuary and upper tidal waters of the Thames. The plaintiff, acting under the orders of the other hand, assisted in navigating the barge, though his main duty was to assist in loading and unloading her:—*Held*, that the plaintiff was a "seaman," and was consequently excluded from the operation of the Employers' Liability Act, 1880: *Ibid.*

See *Reg. v. Lynch*, [1898] 1 Q. B. 61, decided on the similar section (sect. 16) in the Conspiracy and Protection of Property Act, 1875, printed *supra*.

[Section 14 extends the Act to Scotland.]

[Section 15 extends the Act to Ireland.]

RULES OF 1887 UNDER "THE EMPLOYERS AND WORKMEN
ACT, 1875."

1. These Rules may be cited as the Employers and Workmen Rules, 1886, and shall come into operation on the first day of January, 1887. Short title
and com-
mencement.

2. The proceedings in relation to any dispute between an employer and a workman be (*sic*) commenced under the Employers and Workmen Act, 1875, in a court of summary jurisdiction for the district in which the defendant or one of the defendants dwelt or carried on business, or was employed at the time the cause of action arose, or in which he or one of them happens to be at the time of the entry of the action, and thereupon the same proceedings shall be had, and the same forms may be used as upon a claim for a civil debt under the Summary Jurisdiction Acts: Provided that the summons shall be served four clear days at least before the hearing in manner directed by the said Summary Jurisdiction Acts, or by leaving it with an adult person at the office or place of business or employment of the defendant or one of the defendants: Provided also that no order of commitment shall be made against an apprentice until he shall have been personally served with a judgment summons. Procedure.

3. A defendant shall not, except by leave of the court of summary jurisdiction, on such terms as the court may think fit, be permitted to set up against the claims of the plaintiff any set-off or counter-claim, unless he shall have served, or caused to be served, by registered post letter or otherwise, two clear days at least before the return-day, a notice thereof directed to the plaintiff at his address as mentioned in the summons, setting forth the particulars of such set-off or counter-claim. Service of any notice by post shall, unless the contrary be proved, be deemed to have been made on the day upon which the letter would have been delivered in the ordinary course of post. Set-off or
counter-
claim.

4. Where disputes between an employer and his workmen are of such a character that the liability of the employer to divers of his workmen depends upon circumstances common to a whole class of their claims, the names of all the workmen whose claims are grounded upon common circumstances may be inserted as plaintiffs in one summons. Where the number of such plaintiffs is large, the name of one plaintiff only may be inserted in the body of the summons, and in such case the names of the other plaintiffs, together with their descriptions and addresses and the amounts of their respective claims, may be indorsed on the summons or added in a schedule thereto annexed. Names of
plaintiffs
claiming
upon com-
mon circum-
stances to be
inserted in one
summons.

5. The employer may, at the hearing of any such summons, object that the claim of any plaintiff included in the summons ought to be separately heard and determined, either on the ground that the amount claimed is disputed, as well as the liability, or as depending on special circumstances. The name of any plaintiff, whose claim is so objected to, shall be struck out by order of the court of summary jurisdiction. Defendant
may object
that a plain-
tiff's claim
shall be heard
separately.

6. When the summons comes on for hearing, the case of the plaintiff first named in the summons shall (unless the court otherwise directs) be heard Determina-
tion of first-

- named plaintiff's claim to determine the others. and determined, and the claims of all the other plaintiffs whose names shall have been included in the summons, and not struck out as in Rule 5 provided, shall abide the result of the case so determined.
- Where summons dismissed. 7. If the court of summary jurisdiction dismisses the summons, no claim shall afterwards be admitted at the instance of any workman whose name was included in the summons (and was not struck out as in Rule 5 provided) in respect of the claim made thereby, unless he shows to the satisfaction of the court that his name was included in the summons without his consent.
- Where claimants succeed. 8. If the court of summary jurisdiction finds in favour of the plaintiff whose case is tried, it shall make an order on all the claims of the plaintiffs included in the summons (not struck out as in Rule 5 provided), and such order shall operate and take effect as if the claim of each workman, whose name may have been so included as a plaintiff in the summons and not struck out, had been separately heard and determined by the court, and an order had been made on each such claim.
- New trial. 9. The court of summary jurisdiction by whom any action has been determined *ex parte* may, at the same or any subsequent court, set aside any judgment so given, and any process thereon, and may grant a new trial on such terms as the court may think fit.
- Fees. 10. The fees to be paid by a person seeking the assistance of the court of summary jurisdiction shall be those contained in the schedule annexed hereto.
- Costs. 11. The court of summary jurisdiction may, in its discretion, allow any party in respect of any expense he may have incurred in the employment of a solicitor, any sum not exceeding ten shillings where the sum claimed exceeds forty shillings, and not exceeding fifteen shillings where it exceeds five pounds.
- Forms. 12. The forms in force under the Summary Jurisdiction Rules, 1886, so far as the same are applicable, together with the forms in the schedule hereto, and forms to the like effect, with such variations as circumstances may require, may be used in proceedings under this Act.
- Annulment. 13. The rules and forms under the Employers and Workmen Act, 1875, heretofore in use are hereby annulled.

(Signed) HERSCHELL, C.

The 16th July, 1886.

SCHEDULE.

1.

ORDER RESCINDING CONTRACT.

In the [county of . Petty Sessional Division of].

Between A. B., Plaintiff,
and
C. D., Defendant.

Before the court of summary jurisdiction sitting at .

It is adjudged that the [*or this*] contract [*or instrument of apprenticeship*] made between the plaintiff and defendant [on the day of 18] be rescinded, and that the plaintiff [*or defendant*] do pay to the sum of pounds, being the whole [*or a part*] for wages [*or damages, or in respect of the premium paid on such instrument of apprenticeship*].

Dated the day of one thousand eight hundred and .

J. P.,

Justice of the peace for the [county] aforesaid. (L.S.)

2.

ORDER FOR THE PERFORMANCE OF CONTRACT.

In the [county of . Petty Sessional Division of].

Between A. B., Plaintiff,
and
C. D. [and E. F.] Defendant.

Before the court of summary jurisdiction at .

It is ordered that the defendant [C. D.] do perform his contract [of apprenticeship] with the plaintiff, that is to say [*setting out the particulars if necessary*].

[And that he [*or the defendant E. F.*] do pay to the plaintiff the sum of for damages].

And the defendant, the said E. F. [*or C. D.*], being willing to give security for the performance of such contract, the court hereby accepts his security in pounds, with suret in pounds [each] for the performance of such contract as aforesaid [in place of the payment of [£ part of] such damages].

Dated the day of one thousand eight hundred and .

J. P.,

Justice of the peace for the [county] aforesaid. (L.S.)

CHAPTER XIV.

STATUTORY LIABILITY OF EMPLOYERS.

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- I. *Employers' Liability Act*, 1880 (43 & 44 *Vict. c.* 42).
 - II. *Lord Campbell's Act* (9 & 10 *Vict. c.* 93).
 - III. *Workmen's Compensation Act*, 1906 (6 *Edw. 7, c.* 58).
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I. *Employers' Liability Act*, 1880.

THE Employers' Liability Act, 1880, which has been continued annually since the end of 1887 (see sect. 10), is untouched (*a*) by the Workmen's Compensation Act, 1906.

Before dealing in detail with the interpretation of the Act, some propositions which have been established regarding it may be stated:—

- (1) That a contract by which any or all of the benefits of the Act are waived for a consideration is binding on the parties thereto and their legal representatives;
- (2) That an infant will be bound by such a contract if it be for his benefit;
- (3) That an employer has an insurable interest under the Act, and may enter into a valid contract of insurance against the liability thereunder;
- (4) That the Act places the workman in the same position as a licensee lawfully on the premises of the employer;
- (5) That contributory negligence and acceptance by the workman of the risks from which he suffered are defences available to the employer;
- (6) That the Act applies only to persons employed in manual work;
- (7) That no action will lie against the executors of an employer —*actio personalis moritur cum personâ* (*aa*).

(*a*) Save in the matter of appeal in Scotland: see sect. 6 of the Employers' Liability Act, 1880, and the note there, at p. 639, *infra*.

(*aa*) *Gillett v. Fairbank* (1887), 3 T. L. R. 618. Cf. Workmen's Compensation Act, 1906, s. 13, the definition of "employer."

Contracting out of the Act.

Many workmen have contracted themselves out of the Act. Such contracts are valid (*b*). It is not, as already explained (*c*), contrary to public policy for a workman to accept the risks of a lawful employment. In *Griffiths v. Dudley* (*b*), it was decided that employers may contract themselves out of any section or part of the Act; *e.g.* they may agree with their workmen that information of defects mentioned in sect. 2, sub-sect. (3), be given to a certain specified "superior" and to him only. To support an agreement to give up claims under the Act there must be consideration of some sort; and if the agreement be in writing, the consideration must be expressed (*d*).

Contracts between masters and servants, by which the latter agree to waive the benefits of the Act, need not be in writing; for obvious reasons, however, they had better be so. Such contracts may be made by posting up in mills or works printed regulations or notices, provided the workmen see them before they are engaged (*e*).

In *Clements v. London & N. W. Ry. Co.* (*f*), a contract by which an infant waived his rights under the Act in consideration of certain advantages under an accident fund was held to be for his benefit, and binding upon him.

One of the chief disputes under the Act has been as to implied acceptance of risks. Some early cases appeared to decide that mere knowledge of the risks implied acceptance; the later cases, to be mentioned presently, emphasise the fact that mere knowledge is only one element. Such acceptance must be distinctly proved, and the remaining in employment with full knowledge and appreciation of the risks will not necessarily prove it (*g*).

Accord and Satisfaction.

A workman who has been injured may lose the benefit of the Act by accepting a sum as compensation for the injuries which he

(*b*) *Griffiths v. Dudley* (1882), 9 Q. B. D.
357.

(*c*) *Vide* p. 299, *supra*.

(*d*) *Vide* Pt. i. Chap. VIII., *supra*.

(*e*) *Carus v. Eastwood* (1875), 32 L. T.

(N. S.) 855.

(*f*) [1894] 2 Q. B. 482.

(*g*) *Smith v. Baker*, [1891] A. C. 325,
355; *Williams v. Birmingham Battery
and Metal Co.*, [1899] 2 Q. B. 338.

has sustained (*h*). He will be deprived of all right to any statutory penalty if he has previously brought an action under the Act for the same cause of action; and any penalties paid to him are to be deducted from the damages recovered in an action under the Act (*i*). If anyone entitled to compensation for injuries be induced to give a release or discharge in full in consideration of compensation received, under the influence of force, fear, fraud (*k*), or misapprehension as to its intended effect (*l*), the release will not debar him from subsequently suing in respect of the same injuries.

The principle of *Read v. Great Eastern Ry. Co.* (*m*) applies to claims under this Act. In that case it was held to be a good plea to an action under Lord Campbell's Act by the plaintiff, as widow of a passenger whose death had been caused by the defendants' negligence, that he had in his lifetime been paid and had accepted a sum of money in full satisfaction of all claims.

Position of Workmen under the Statute.

Much litigation has been required in order to determine the rights of workmen under the Act.

Sect. 1 enacts that, in the cases specified in its five subsections—

Where personal injury is caused to a workman . . . the workman, or, in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of, nor in the service of the employer, nor engaged in his work.

The defence of "common employment," as laid down in *Priestley v. Fowler* (*n*), has not been in all cases abolished; it is taken away only in the five particular instances specified in the

(*h*) Addison on Torts (7th ed.), p. 54. See *Wright v. London General Omnibus Co.* (1877), 2 Q. B. D. 271. In *Ellen v. Great Northern Ry. Co.* (1901), 49 N. R. 395, blindness having subsequently supervened, the effect of a receipt in full satisfaction was held to be a question for the jury.

(*i*) Sect. 5. Cf. the Workmen's Compensation Act, 1906, s. 1, sub-s. (5).

(*k*) See *Stewart v. Great Western Ry.*

Co. (1865), 2 De G. J. & S. 319; *Hirschfield v. London, Brighton & South Coast Ry. Co.* (1876), 2 Q. B. D. 1.

(*l*) *Rideal v. Great Western Ry. Co.* (1858), 1 F. & F. 706; *Lee v. Lancashire & Yorkshire Ry. Co.* (1877), 6 Ch. 527; and see *Prosser v. Lancashire, &c., Accident Insurance Co.* (1890), 6 T. L. R. 285.

(*m*) (1868), L. R. 3 Q. B. 555.

(*n*) (1837), 3 M. & W. 1.

first section of the Act (*o*). *Lowell v. Howell* (*p*) would have been rightly decided had it been an action under the Act.

In spite of doubts expressed by some judges (*q*), it is clear that the defence *volenti non fit injuria*—that the accident was one of the risks which the servant accepted—is still available to the employer. But, as the majority of the Court of Appeal point out in *Thomas v. Quartermaine* (*r*), this maxim is used loosely to cover a number of cases not always arising out of contract; they turn (in the words of Bowen, L. J., in that case) on a “duty created by some wider principle of law which happens to take effect and to receive apt illustration in the particular instance of some particular contract.” The wider principle of law referred to in this passage is that expressed by the maxim *volenti non fit injuria*, applicable equally to servants and licensees; and it remains a good defence under the Act (*s*). The effect of the last words of the first section of the Act is that the workman ceases to be an employee and becomes a licensee—“a member of the public entering on the defendant’s property by his invitation” (*t*). “The Act, with certain exceptions, has placed the workman in a position as

(*o*) Per Cave, J., in *Griffiths v. Dudley* (1882), 9 Q. B. D. 357, 366.

(*p*) (1876), 1 C. P. D. 161. See *Howard v. Bennett* (1888), 58 L. J. Q. B. 129.

(*q*) Esher, M. R., in *Thomas v. Quartermaine* (1887), 18 Q. B. D. 685, 688; A. L. Smith, J., in *Webb v. Ballard* (1886), 17 Q. B. D. 122, 125, 127.

(*r*) See note (*q*), *supra*.

(*s*) In *Smith v. Baker*, [1891] A. C. 325, Lord Herschell discusses *Thomas v. Quartermaine* as follows (p. 366): “As far as appears, this was amongst the ordinary duties of his employment, and if it was assumed that there was a breach of duty on the part of the employer in not having the vats fenced, as it obviously was, since if there had been no breach of duty it would not have been necessary to inquire whether the maxim *volenti non fit injuria* afforded a defence, it seems to me that it must have been a question of fact, and not of law, whether the plaintiff undertook the employment with an appreciation of the risk which arose on the occasion in question from the particular nature of the work which he had to perform. If the effect of the judgment be that the mere fact that the plaintiff, after he knew the condition of the premises, continued to work and did not quit his employment afforded his employer an answer

to the action, even though a breach of duty on his part was made out, I am unable, for the reasons I have given, to concur in the decision.” The first of these criticisms is the same as that made by Esher, M. R., in *Yarmouth v. France* (19 Q. B. D. 647, 654), when explaining his dissent from the decision in *Thomas v. Quartermaine*. The answer is clear—there was no assumption of a breach of duty on the part of the employer in *Thomas v. Quartermaine*; it was exactly what was not assumed. The plaintiff, who had to make out a *prima facie* case of negligence, never did so; he was proved to be *volens*. There was no evidence of negligence to go to the jury. To the second criticism the answer is that *Thomas v. Quartermaine* did not decide anything of the kind. *Smith v. Baker*, *Thomas v. Quartermaine*, and *Yarmouth v. France* make it clear that there are a number of elements in the state of mind known to the law as *volens*, of which mere continuance in service is only one. See the remarks of A. L. Smith, J., upon *Smith v. Baker* in *Greenhalgh v. Carnarvon Coal Co.* (1891), 8 T. L. R. 31. And see *Pyner v. Ballard, King & Co.* (1897), 14 T. L. R. 57; *Williams v. Birmingham Battery and Metal Co.*, [1899] 2 Q. B. 328.

(*t*) Per Fry, L. J., in *Thomas v. Quartermaine*, *l. c.*, at p. 700.

advantageous as, but no better than, the rest of the world, who use the master's premises at his invitation on business" (*u*).

In what is the *locus classicus* on the subject (*x*), Bowen, L. J., remarked :—

It is no doubt true that mere knowledge on the part of the injured person which will prevent him from alleging negligence against the occupier must be a knowledge under such circumstances as necessarily lead to the conclusion that the whole risk was voluntarily incurred. The maxim, be it observed, is not *scienti non fit injuria*, but *volenti*. There may be a perception of the existence of the danger without comprehension of the risk, as when a workman is of imperfect intelligence, or, though he knows the danger, remains imperfectly informed as to its nature and extent. There may, again, be concurrent facts which justify the inquiry whether the risk, though known, was really encountered voluntarily. The injured person may have had a statutory right to protection, as when an Act of Parliament requires machinery to be fenced.

No rule can be laid down as to the circumstances in which consent will be inferred. If the occupation is necessarily dangerous, an agreement to accept the risk will be inferred; but that is a question of fact, not of law (*y*).

The master may also set up the following defences :—

(A) Contributory Negligence (*z*).

By contributory negligence is meant that the plaintiff "himself has contributed to the accident in such a sense as to render the defendant's breach of duty no longer its proximate cause" (*a*).

The burden of proving such contributory negligence is on the defendant (*b*).

(B) That the servant who was negligent was not acting within the scope of his duties or his authority (*c*).

(C) That the injury was due to the wilful act of the servant who caused it (*d*).

(D) Act of God.

(*u*) Per Bowen, L. J., in *Thomas v. Quartermaine*, *l. c.*, at p. 693.

(*x*) *Thomas v. Quartermaine*, *l. c.*, p. 696.

(*y*) *Yarmouth v. France* (1887), 19 Q. B. D. 647, per Lindley, L. J., at pp. 659—661.

(*z*) *Stuart v. Evans* (1883), 49 L. T. (N. S.) 138; *Webbin v. Ballard* (1886), 17 Q. B. D. 122. See Chap. XXVI,

supra, and remarks on sect. 2, sub-sect. (3), of the Act, *infra*.

(*a*) *Thomas v. Quartermaine*, *l. c.*, per Bowen, L. J., at p. 694.

(*b*) *Wakelin v. London & South Western Ry. Co.* (1887), 12 A. C. 41; *Smith v. South Eastern Ry. Co.*, [1896] 1 Q. B. 178.

(*c*) See Chap. XXIV., *supra*.

(*d*) See Chap. XXV., *supra*.

(E) That the plaintiff was not a "workman" within the Act (sect. 8).

(F) That no notice of injury was given (sect. 4).

(G) That defective notice of injury was given (sect. 7).

(H) That the case is not within sect. 1 of the Act, as qualified by sect. 2.

(I) *Res judicata*, i.e., where both a statutory and common law action are possible (sect. 2, sub-sect. (1)).

(K) That the workman has contracted out of the Act.

(L) That the injury was not caused by any of the matters mentioned in sect. 1.

Insurance.

Employers have an insurable interest in the liabilities under the Act, and contracts of insurance against liabilities thereunder are valid. An insurer who pays an insured is, as a rule, subrogated to the remedies of the insured. (1) If the insurer indemnifies the latter for claims made by a workman injured by reason of the negligence of a foreman, what is the position of the insurer? The employer may sue his foreman; or the insurer, after payment to the insured, may, in the employer's name, do so (*e*). (2) If the insurer indemnifies the insured against claims made under sect. 1, sub-sect. (1), of the Act (i.e., in respect of defects in the condition of works, machinery or plant), what is the position? The question is answered by the decision of the Court of Appeal in *Moorbray v. Merryweather* (*f*). The defendant, a shipowner, supplied the plaintiff, a stevedore employed to unload his ship, with the winches, chains, and other gear necessary for the work, thus impliedly warranting them to be reasonably fit for the purpose. A chain broke. A workman of the plaintiff's who was thereby injured brought an action under the Act against the plaintiff, his allegation being that the defect in the chain might have been discovered by reasonable care. The plaintiff settled the claim—properly, as was admitted at the trial—for 125*l.*, and then sued the defendant for that sum for breach of warranty. The defendant contended that the damages were too remote. The Court of Appeal, refusing to follow the Scotch case of *Orington v. McVicar* (*g*), held that the defendant was liable; the damages

(*e*) Leake's *Law of Contracts* (3rd ed.), p. 63; May on *Insurance*, p. 554.
(*f*) [1895] 2 Q. B. 640.

(*g*) (1864), 2 Sc. Sess. Ca. (3rd ser.) 1066. See *Kiddle v. Lovett* (1886), 16 Q. B. D. 605, 612. Under the Work-

claimed were the natural result of the breach of warranty. The insurer would, therefore, in such a case as the above, be subrogated to the right of action for breach of warranty. In *Biddle v. Hart* (*h*), an action by the workman against his employer under sect. 1, sub-sect. (1), of this Act, on facts similar to those in *Monbray v. Merryweather*, the Court of Appeal held that the case could not be withdrawn from the jury on the ground that there was no evidence of a duty owed by the stevedore to his employé.

Workmen to whom the Act applies.

The Act (sect. 8) defines "workman" as meaning "a railway servant and any person to whom the Employers and Workmen Act, 1875, applies." Probably "railway servant" means only a servant of a railway company of the same kind or grade as those described in the Act referred to.

For the notes on sects. 10, 12 and 13 of the Employers and Workmen Act, 1875, see pp. 616—620, *supra*.

For the purposes of liability for their servants' negligence, the Corporation of the Trinity House is not a Government department (*i*).

The Act does not apply to seamen or apprentices to the sea-service: *vide* Employers and Workmen Act, 1875, s. 13, and the notes thereon at p. 620, *supra*.

"Workman" includes "woman": 52 & 53 Vict. c. 33, s. 1, sub-s. (1) (a).

Workmen in the service of the Crown, not being expressly mentioned, are not included in the Act.

Cf. the definition of "workman" in the Workmen's Compensation Act, 1906, s. 13. There is no definition of "employer" in the Act. Sect. 8 merely states that that term "includes a body of persons corporate or unincorporate."

men's Compensation Act, 1906, s. 6,
the workman can sue the "stranger"
in such a case.

(*h*) (1907), 23 Times L. R. 262.
(*i*) *Gilbert v. Corporation of Trinity
House* (1886), 17 Q. B. D. 795.

43 & 44 VICT. c. 42 (1880).

ARRANGEMENT OF SECTIONS.

Sections.

1. Amendment of law.
 2. Exceptions to amendment of law.
 3. Limit of sum recoverable as compensation.
 4. Limit of time for recovery of compensation.
 5. Money payable under penalty to be deducted from compensation under Act.
 6. Trial of actions.
 7. Mode of serving notice of injury.
 8. Definitions.
 9. Commencement of Act.
 10. Short title.
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An Act to extend and regulate the Liability of Employers to make Compensation for Personal Injuries suffered by Workmen in their Service.

Amendment
of law.

1. Where after the commencement of this Act personal injury is caused to a workman,

(1) By reason of any defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer; or

This sub-section is to be read with sect. 2, sub-sect. (1), which limits its application. And see sect. 2, sub-sect. (3).

The phrase "defect in the condition of the ways," &c., it has been suggested, is wider than "defect in the ways," &c. Of the meaning of the former phrase two views have been put forward. One is to the effect that if an employer supply instruments, &c. reasonably fit for the purpose to which they are applied, there is no "defect"; the master has discharged his duty, and evidence of negligence producing the defect either on the part of the master or his superintendent is necessary to constitute the cause of action. The other view is that an instrument is "defective," even if it be the best known for the purpose to which it is put, if it be dangerous to the man using it. The former view was adopted by the majority of the Court of Appeal in *Walsh v. Whiteley* (1888), 21 Q. B. D. 371.

In *Heske v. Samuelson* (1883), 12 Q. B. D. 30 (a coke-lift with unfenced sides), a Divisional Court held a machine to be "defective," which was "not in a proper condition for the purpose to which it was applied"; and this definition was expressly approved in *Gripps v. Judge* (1884), 13 Q. B. D. 583, a case of a sound ladder unfit for the purpose to which it was being put. In *Morgan v. Hutchings* (1890), 59 L. J. Q. B. 197, a case very near the line, a leather-piercing machine, perfect for the purpose of piercing leather, had no cog-wheel guard. A young boy, whilst feeding it with leather, had his hand caught and crushed by the cogs. Previous accidents with similar machines were proved, and the factory inspector had warned the employer of the danger five years before. On these facts the machine was held by Coleridge, C. J., and Esher, M. R., sitting as a Divisional Court, to be "defective"; Coleridge, C. J., saying:—"The governing principle, in my opinion, is that where a machine is defective with reference to danger, and such defect is within the knowledge of the employer, he is then liable." This decision may be explained by the fact that a child cannot be expected to take that reasonable care, the absence of which disentitles a workman to recover. See *Tate v. Latham and Son*, [1897] 1 Q. B. 502 (C. A.): a circular saw kept in motion without its guard held "defective," as being so at the moment of the injury.

In *Walsh v. Whiteley*, *ubi sup.*, Esher, M. R., maintained the second view:—"I am prepared to say that, if a careful consideration would show a master that the

machine was dangerous to the workman using it, even though that machine could not be improved upon, it is negligence on the part of the master to use for his profit a machine which is dangerous to his workman, and, if he does use it, he can only do so upon the terms of being liable to pay compensation to the workman, if he is thereby injured." An earlier passage in this judgment shows that Lord Esher was applying the principle of such cases as *Jones v. Festiniog Ry. Co.* (1868), L. R. 3 Q. B. 733, and *Powell v. Fall* (1880), 5 Q. B. D. 597, where the emission of sparks by a locomotive engine had caused damage; a principle akin to that of *Fletcher v. Rylands* (1868), L. R. 3 H. L. 330. In this view, negligence is immaterial; no care on the part of a master who supplies dangerous machinery can prevent his being liable. No reason is given why the duty of employers in this respect at Common Law should be enlarged under the Act, which "is not directed against dangerous machines but against the negligence of employers" (j).

In *Biddell v. Hart* (1907), 23 T. L. R. 262, the Court of Appeal held that there was a duty cast upon an employer in respect of borrowed plant to see that it was reasonably fit for the purpose to which it was applied.

In *McGriffin v. Palmer's Shipbuilding Co. (k)*, the question was whether a substance projecting into the roadway was "a defect in the condition of the way." A Divisional Court held it was not. Stephen, J., refused to stretch the term "so as to include obstacles lying on the way, which obstacles do not in any degree alter the powers of the way, or alter its fitness for the purpose for which it is generally employed, and cannot be said to be incorporated with it." At Common Law an employer is liable for injury caused by defective arrangement or system of working, "as much . . . as if he had supplied defective machinery" (l). The same principle would appear to apply under the Act: *Smith v. Baker*, [1891] A. C. 325, 354; see *Stanton v. Scrutton & Co.* (1893), 9 T. L. R. 233.

The meaning of the word "ways" was considered in *Willets v. Watt & Co.*, [1892] 2 Q. B. 92, and Lord Esher there defined it thus: "The course which a workman would, in ordinary circumstances, take in order to go from one part of the shop, where a part of the business is done, to another part where business is done, where the business of the employer requires him to do so." See *Bromley v. Cavendish Spinning Co.* (1886), 2 T. L. R. 881. In *Hoove v. Mark Finch & Co.* (1886), 17 Q. B. D. 187, a warehouse wall, in course of construction, was held not within the term "works" in this section, as not being "connected with or used in the business of the employer"; Mathew, J., intimating that the same would hold good of machinery "brought into a place intended to be used." A broken-down machine, in the course of removal to a corner of the works, is within the section: *Thompson v. City Glass Bottle Co.*, [1902] 1 K. B. 233. An old house in the occupation of a builder, for purposes of demolition, may be said to be his "works": *Brannigan v. Robinson*, [1892] 1 Q. B. 344. The phrase "stock in trade" was struck out of the bill lest farmers should be made responsible for the vice or other defects of their horses. The decisions upon the Act have defeated the precaution. In *Farmouth v. France (m)*, a horse belonging to a wharfinger, and used

(j) Per Lopes, L. J., in *Walsh v. Whiteley* (1888), 21 Q. B. D. 371, 380. See *Kiddle v. Lorette* (1885), 16 Q. B. D. 605, 610 (competent contractor employed to fix a painting-stage; stage gave way; no evidence of negligence); *Moore v. Gimson* (1889), 58 L. J. Q. B. 169 (foreman takes word of competent contractor that wall is safe; wall falls; no evidence of negligence); *Digby v. East Ham Urban District Council* (1896), 13 T. L. R. 11 (collection of gas in sewer; ventilation pipes blocked; no ropes used or tests applied, but no evidence that such precautions were ordinarily taken; no evidence of negligence).

(k) (1882), 10 Q. B. D. 5, followed in *Pegram v. Dixon* (1886), 55 L. J. Q. B. 447; *Wood v. Dorrall* (1880), 2 T. L. R. 550 (unfenced aperture to a staircase is a defect in the condition of the ways);

Willets v. Watt & Co., [1892] 2 Q. B. 92 (catch-pit with removable lid in workshop where men passed to and fro; lid temporarily removed; plaintiff fell in; held, no defect in condition of way, but negligent user of it); *Gill v. Thornycroft* (1894), 10 T. L. R. 316 (no rails on a stationary barge used as a passage; held, a defect in plant).

(l) Per Cranworth, C., in *Bartonshill v. McGuire* (1858), 3 Macq. 300, 310.

(m) (1887), 19 Q. B. D. 647. See *Haston v. Edinburgh Tramways Co.* (1887), 14 R. 621 (a horse held to be "plant"); *Carter v. Clarke* (1898), 14 T. L. R. 172 (a ship held to be plant, so as to make coal-shippers liable for the absence of ventilators). See the definition of "plant" in the Railway Act, 1867, s. 4.

by him for the purposes of his business, was held to be "plant," so that the inherent viciousness of the animal was "a defect in the condition of the plant," within the Act. Lindley, L. J., in that case (at p. 658) held "plant" to include "all goods and chattels fixed or moveable, live or dead, which he keeps for permanent employment in his business."

So far as sect. 2, sub-sect. (1), which is to be read with sect. 1, sub-sect. (1), relates to the negligence of the employer, it re-states the Common Law. This is the only instance where the workman has a remedy both at Common Law and under the Act. In *Monday v. Thames Ironworks & Co.*, a Divisional Court refused an application for a *certiorari* to remove a case brought by a workman under sect. 1, sub-sect. (1) of the Act on the ground, among others, that he desired to consolidate the action with one brought by him in the Superior Court to recover damages for the same injury from the defendants on their Common Law liability. Sect. 5 showed, said Manisty J. in that case, "that it was not intended that there should be two heads of compensation for the same cause of action. On the contrary, the ordinary principle is that if there is a statutory proceeding for a particular cause of action, and compensation is recovered, although limited in amount, an action at Common Law for large damages shall not be maintained." In *Jones v. Westinghouse Brake Co.*, *Times Newspaper*, Feb. 1, 1898, p. 10, Russell, C. J., expressed the opinion that an action would lie under this Act in respect of what was also an offence under the Factory Acts. See sect. 5, *infra*.

The latter words of sect. 2, sub-sect. (1), alter the Common Law, as laid down in *Wilson v. Merry* (1868), L. R. 1 Sc. App. 326, which made the employer liable only in the case of his having chosen an incompetent foreman. In *Moore v. Gimson* (1889), 58 L. J. Q. B. 169, Hawkins, J., rested his judgment partly upon the fact that there was no evidence that the foreman in that case was "entrusted . . . with the duty of seeing that the ways, works, machinery, or plant were in proper condition." See *Tate v. Latham*, [1897] 1 Q. B. 502.

- (2) By reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him whilst in the exercise of such superintendence; or

Sect. 8 defines "a person who has superintendence entrusted to him" as "a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour." "Ordinarily" appears to refer to the duties of the particular man, not to the custom of the trade or the ordinary course of business. See *Kellard v. Rooke*, *cit. infra*.

The chief difficulty which has arisen here is whether the injury to be within the statute must have been caused by an act of negligent superintendence. In *Shaffers v. The General Steam Navigation Co.* (1883), 10 Q. B. D. 356, a man who was controlling the movements of a crane by means of a guy-rope, while giving orders for the hoisting and lowering of sacks, was held to be not within the definition. See *Kellard v. Rooke* (1887), 19 Q. B. D. 585; (1888), 2 Q. B. D. 367. In *Osborne v. Jackson* (1883), 11 Q. B. D. 619, a foreman, who negligently handed the plaintiff a plank, calling him to take it, was held within it. The distinction though fine is real; in the former case a negligent act of manual labour, in the latter a negligent order, caused the injury. These decisions chiefly turned on the definition in sect. 8: but they are authorities for the proposition that the negligence must consist in an act of superintendence. In any other view, the words in sect. 1, sub-sect. (2), "whilst in the exercise of such superintendence" seem to have little meaning. See, however, as to the Scotch decisions, *Sweeney v. McGilvray* (1886), 24 Sc. L. R. 91.

- (3) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed; or

(n) (1882), 10 Q. B. D. 59. See the remarks on sect. 6, *infra*; and see sect. 1, sub-sect. (2) (b) of the Workmen's Compensation Act, 1906, *infra*.

This sub-section, which is wider than that which precedes it, makes a considerable change in the Common Law; the person giving the order may be a fellow-workman: *Millward v. Midland Ry. Co.* (1884), 14 Q. B. D. 68; *Dolan v. Anderson* (1885), 12 R. 894; though he must be possessed of authority: *Howard v. Bennett* (1888), 60 L. T. (N. S.) 152. The order need not be express; it may be implied from the ordinary course of business: *Millward v. Midland Ry. Co.*, *ubi sup.* See remarks of Escher, M. R., in *Kellard v. Rooke* (1888), 21 Q. B. D. 367, 369. The obligation to conform to the order is part of the cause of action, and it would seem that an order given contrary to the rules and bye-laws of the business would not be within the sub-section; a Divisional Court so held in *Bunker v. Midland Ry. Co.* (1882), 47 L. T. (N. S.) 476. But with similar facts before it, a Divisional Court decided in favour of the plaintiff in *Marley v. Osborn* (1894), 10 T. L. R. 388. It is difficult to understand this decision. Bunker's case was mentioned in the argument.

Must the order itself be negligent and the conformity to that negligent order the immediate cause of the injury? It need not. In *Wild v. Waggood*, [1892] 1 Q. B. 783, Lord Herschell observes (at p. 789): "It is not necessary to endeavour in the present case to determine or lay down any general rule as to the construction of this section beyond this, that I am quite clear it is not limited to an injury arising from an order which order is negligent in itself. . . . That is all I lay down as regards the construction of the section, beyond this: that I do not think it essential to show that the conformity to the order was what has been called the *causa causans* of the injury. The negligence must be proved, and if you prove the negligence, then it is sufficient if, in addition to proving that, you also prove that the injury resulted not from the negligence alone, but from the negligence and the conforming to the order." Lindley, L. J., in the same case (at p. 793) puts it thus: "Those two things are so connected that it is impossible to say that the injury was not caused by those two things, viz., negligence of the person giving the order, and conformity with the order." The remarks of Coleridge, C. J., on this point in *Howard v. Bennett* (1888), 60 L. T. (N. S.) 152, are disapproved.

- (4) By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or bye-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf; or

This must be read with sect. 2, sub-sect. (2), which forbids compensation "under sub-sect. (4) of sect. 1, unless the injury resulted from some impropriety or defect in the rules, bye-laws, or instructions therein mentioned, provided that, where a rule or bye-law has been approved or has been accepted as a proper rule or bye-law by one of Her Majesty's Principal Secretaries of State, or of the Board of Trade, or any other department of the Government under or by virtue of any Act of Parliament^(o), it shall not be deemed for the purpose of this Act to be an improper or defective rule or bye-law."

Sect. 1, sub-sect. (4), is obscure, and it is made more so by sect. 2, sub-sect. (2). The first part of the former sub-section contemplates the case of A. doing, or not doing, something in obedience to the rules or bye-laws of the employer B., and C., a workman, being thereby injured. A stranger injured in such circumstances could, it is conceived, recover if the injury were the natural consequence of such act or omission. But the statute adds two qualifications to a workman's right of action: The injury must result from some impropriety or defect in the bye-laws (perhaps only another way of saying that it must be the natural consequence of obedience to the rules or bye-laws); secondly, an improper or defective rule or bye-law will, for the purpose of the Act, be proper and not defective if it be approved or accepted as stated in sect. 2, sub-sect. (2). This proviso makes the position of the workman under the Act worse than it is at Common Law, according to which an employer would be answerable for accidents due to defective rules or bye-laws which he had negligently drawn up. See *Vose v. Laneashire & Yorkshire Ry. Co.* (1858), 2 H. & N. 728.

(o) *E.g.*, Petroleum Act (34 & 35 Vict. c. 105), s. 4; Coal Mines Regulation Act (50 & 51 Vict. c. 58), ss. 51—57; Metalliferous Mines Regulation Act (35 & 36 Vict. c. 77), ss. 23—30; Ex-

plosives Act (38 & 39 Vict. c. 17), ss. 35—37; Alkali Works Regulation Act (44 & 45 Vict. c. 37), s. 20; Factory and Workshop Act, 1901 (1 Edw. VII. c. 22).

The second part of sect. 1, sub-sect. (4), mentions "particular instructions." This may mean a mere repetition of the orders of the employer; the person delegated being only the mouthpiece of the employer. In this view, it is conceived, the Act merely repeats the Common Law. Or "particular instructions" may mean instructions given by one who is entrusted with authority to use his discretion in giving instructions on a particular occasion, in which case the sub-section apparently deals only with instances of the rule laid down in sect. 1, sub-sect. (3).

In practice this sub-section is rarely made the foundation of a claim.

- (5) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway, the workman, or in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of nor in the service of the employer, nor engaged in his work.

In *Cox v. Great Western Ry. Co.* (1882), 9 Q. B. D. 106, a Divisional Court held that a jury was right in finding, as a fact, that H., a "capstan man," in the employment of the defendants, that is, a man, who by means of a capstan, to which motive power was imparted by a fixed hydraulic engine, could put a train of trucks in motion, was "in charge" of a train. See *Haysler v. Great Western Ry. Co.* (1881), 72 L. T. Jo. 120.

A man who, working under an inspector, cleaned and oiled the wires, points and locking-gear, was held not to have "charge" or "control" of the points: *Gibbs v. Great Western Ry. Co.* (1883), 11 Q. B. D. 22; (1884), 12 Q. B. D. 208.

In *McCord v. Cannell & Co.*, [1896] A. C. 57, F., an engine-driver, was detaching and taking, one by one, a line of trucks to a certain point, while H., the fireman, with the acquiescence of F., "scotched" the remaining trucks, which were standing upon an incline. Owing to defective "scotching," one of the trucks ran down hill and killed the plaintiff's husband. The House of Lords held, that either H. or F. or both of them, had "the charge or control" of the train within this sub-section. The tendency of the decisions is against giving a technical construction to the terms in this sub-section.

A steam crane fixed on a trolley, and propelled by steam along a set of rails is not a "locomotive engine": *Morphy v. Wilson* (1883), 52 L. J. Q. B. 524. In *McCord v. Cannell & Co.*, *ubi supra*, a line of trucks, left without an engine, was held to be "a train": Lord Halsbury, L. C., saying (at p. 64): "I should think, speaking in a general way, that the Legislature meant that a locomotive engine by itself, or anything that was drawn along a railway, or was in course of being drawn along a railway by that locomotive engine, should be included in 'a train.' I doubt very much whether it would depend on the number of carriages or the number of vehicles going upon wheels which the locomotive was taking along the railway. I should think the Legislature intended a very wide scope to be given to the use of these words." A line of trucks without an engine is "a train": *Cox v. Great Western Ry. Co.*, *ubi sup.*

The term "railway" is not confined to railways made or used by railway companies: *Doughty v. Firbank* (1883), 10 Q. B. D. 358. Whether the term includes tramways has not yet been decided (*p.*). As defined in Webster and Latham's Johnson, "railway" would include a tramway. The objection to this view is that railways and tramways have been dealt with by Parliament in different Acts; that in the General Tramway Act (33 & 34 Vict. c. 78, ss. 25 and 26), "tramway" is used in contrast to railway; that the reference in the sub-section to "locomotive engine" is against this view; and that the Legislature obviously intended in the Employers' Liability Act to deal specially with railways (sect. 8).

(*p.*) In *Fletcher v. London United Tramways, Ltd.*, [1902] 2 K. B. 269, the Court of Appeal decided that an electrical tramway was within the term "railroad" in the definition of "en-

gineering work" in sect. 7, sub-sect. (2), of the Workmen's Compensation Act, 1897, though not within the definition of "railway" in the same section.

2. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases: that is to say—

Exceptions to amendment of law.

- (1) Under sub-sect. 1 of sect. 1, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to the negligence of the employer, or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition.

See notes on sect. 1, sub-sect. (1), *supra*.

- (2) Under sub-sect. 4 of sect. 1, unless the injury resulted from some impropriety or defect in the rules, bye-laws, or instructions therein mentioned; provided that where a rule or bye-law has been approved or has been accepted as a proper rule or bye-law by one of Her Majesty's Principal Secretaries of State, or by the Board of Trade, or any other department of the Government, under or by virtue of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or bye-law.

See notes on sect. 1, sub-sect. (4), *supra*.

- (3) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.

At one time it was thought that, while taking away the defence of *volenti non fit injuria*, this sub-section gave the master a new statutory defence: *Weblin v. Ballard* (1886), 17 Q. B. D. 122. But the majority of the Court of Appeal decided in *Thomas v. Quartermaine* (1887), 18 Q. B. D. 685, that the object of the sub-section was to limit the master's liability under sect. 1 by making it obligatory for the workman to give information; that the defence of *volenti non fit injuria* remained intact; that the cases to which the sub-section applied were cases of defects of which the workman is cognisant, but the risk of which he has not assumed, or of defects under special statutory provisions as to safety.

"Negligence" in this sub-section must mean a habit of negligence. There is no definition of "superior," but it does not mean, it is submitted, a person superior in the sense of having higher wages.

3. The amount of compensation recoverable under this Act shall not exceed such sum as may be found to be equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury.

Limit of sum recoverable as compensation.

This section fixes a limit. It does not lay down a measure of damages, and earnings made in overtime work for an employer other than he in whose service the workman has been injured may be taken into consideration: *Bortick v. Head, Wrightson & Co.* (1885), 53 L. T. N. S. 909. In *Noel v. Redrath Foundry Co.*, [1896] 1 Q. B. 453, there was evidence that the plaintiff, an apprentice, earning 5s. a week at the time of the accident, would in the subsequent year be earning 14s. to 18s. a week as a workman, and on this latter basis the County Court judge assessed his compensation. A Divisional Court reduced it, assessing it on the basis of his then earnings as an apprentice; adding that such things as food or clothing, of a

computable money value, might be taken into account, but not the value of the tuition.

See as to the principle of computing damages under Lord Campbell's Act, the notes on p. 645, *infra*.

Cf. the words in Sched. I, 2 (a) of the Workmen's Compensation Act, 1906.

Limit of time for recovery of compensation.

4. An action for the recovery under this Act of compensation for an injury shall not be maintainable unless notice that injury has been sustained is given within six weeks, and the action is commenced within six months from the occurrence of the accident causing the injury, or, in case of death, within twelve months from the time of death: Provided always, that in case of death the want of such notice shall be no bar to the maintenance of such action, if the judge shall be of opinion that there was reasonable excuse for such want of notice.

See sect. 7, *infra*, as to form and service of notice. Cf. Workmen's Compensation Act, 1906, s. 2.

This notice must be in writing: *Moyle v. Jenkins* (1881), 8 Q. B. D. 116; *Keen v. Millwall Dock Co.* (1882), 8 Q. B. D. 482; and it may be contained in more than one document: *Keen v. Millwall Dock Co.*, *ubi sup.*; see *Lambley v. Mayor, &c. of East Retford* (1891), 55 J. P. 133.

The defence of "No notice" is a statutory defence within Ord. X, rr. 10 and 18 (C. C. Rules, 1903), and notice thereof must be given: *Conroy v. Peacock*, [1897] 2 Q. B. 6.

By "months" is meant "calendar months" (52 & 53 Vict. c. 63, s. 3). In case of months of unequal length, the calculation is made from last day to last day, *e.g.*, Aug. 31st to Feb. 28th or 29th; Dec. 31st to June 30th: *Migotti v. Colville* (1879), 4 C. P. D. 233.

Money payable under penalty to be deducted from compensation under Act.

5. There shall be deducted from any compensation awarded to any workman, or representatives of a workman, or persons claiming by, under, or through a workman in respect of any cause of action arising under this Act, any penalty or part of a penalty which may have been paid in pursuance of any other Act of Parliament to such workman, representatives, or persons in respect of the same cause of action; and where an action has been brought under this Act by any workman, or the representatives of any workman, or any persons claiming by, under, or through such workman, for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action, such workman, representatives, or person shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action.

Instances of such statutory penalties are those under the Factory and Workshop Act, 1901; the Coal Mines (50 & 51 Vict. c. 58) and Metalliferous Mines (35 & 36 Vict. c. 77) Regulation Acts.

Cf. the provisions on this point in sect. 1, sub-sect. (5), of the Workmen's Compensation Act, 1906.

Trial of actions.

6.—(1) Every action for recovery of compensation under this Act shall be brought in a county court, but may, upon the application of either plaintiff or defendant, be removed into a superior court in like manner and upon the same conditions as an action commenced in the county court may by law be removed.

(2) Upon the trial of any such action in a county court before the judge

without a jury one or more assessors may be appointed for the purpose of ascertaining the amount of compensation.

(3) For the purpose of regulating the conditions and mode of appointment and remuneration of such assessors, and all matters of procedure relating to their duties, and also for the purpose of consolidating any actions under this Act in a county court, and otherwise preventing multiplicity of such actions, rules and regulations may be made, varied, and repealed from time to time in the same manner as rules and regulations for regulating the practice and procedure in other actions in county courts.

"County court" shall, with respect to Scotland, mean the "Sheriff's Court," and shall, with respect to Ireland, mean the "Civil Bill Court."

In Scotland any action under this Act may be removed to the Court of Session at the instance of either party, in the manner provided by and subject to the conditions prescribed by, section nine of the Sheriff Courts (Scotland) Act, 1877.

In Scotland the sheriff may conjoin actions arising out of the same occurrence or cause of action, though at the instance of different parties and in respect of different injuries.

The "removal" under sub-sect. (1) may be effected by certiorari, or by an order under the regulations contained in sects. 126, 129, 130 and 132 of the County Courts Act, 1888. Sect. 62 of that Act does not apply to actions under the Employers' Liability Act, 1880: *Reg. v. Judge of City of London Court* (1885), 14 Q. B. D. 905, where Brett, M. R., says: "It is not merely because of the amount claimed that they (the judges) are to remove the case from the County Court: it is only if some new question of law is raised or some very difficult question in the particular case, as, for instance, as to the way in which the machinery caused the injury. The removal is in the discretion of the judge, and I should think in his discretion he would, except in very peculiar circumstances, leave the case in the County Court." See *Bates v. Warner* (1889), 5 T. L. R. 582; *Potter v. Great Western Colliery Co.* (1894), 10 T. L. R. 380; *Munday v. Thames Ironworks Co.* (1882), 10 Q. B. D. 59. See note on this case on p. 634, *supra*. There seems no good reason why a claim should not be made alternatively under the statute and at Common Law. Whether an action at Common Law can be maintained, one under the statute having failed, or under the statute one having failed at Common Law, must depend on the circumstances of each case, as tested by the principle of *res judicata*: *Langmead v. Maple* (1865), 18 C. B. N. S. 255. There are special provisions on this point in the Workmen's Compensation Act, 1906, s. 1, sub-s. 4.

The special rules regulating procedure under this Act are contained in Ord. XLIV. of the County Court Rules, 1903 and 1904, printed *infra*. Subject to those rules, the ordinary procedure of the Court applies. The House of Lords decided in *Smarthwaite v. Hannay* (q), that neither Ord. XVI. r. 1, nor any other of the Rules of the Supreme Court, permitted the joinder of several plaintiffs suing on several causes of action. Ord. XVI. r. 1 (R. S. C.) was identical with Ord. III. r. 1 (County Court Rules, 1903). In *Carter v. Rigby & Co.*, [1896] 2 Q. B. 113, it was argued that, in spite of that identity, the decision in *Smarthwaite v. Hannay*, *ubi sup.*, did not apply to actions under the Employers' Liability Act, having regard to rr. 18 and 19 of Ord. XLIV. (County Court Rules). The argument failed. In consequence of the remarks of Russell, C. J., in *Carter v. Rigby*, *ubi sup.*, Ord. XVI. r. 1 (R. S. C.) and Ord. III. r. 1 (County Court Rules) were altered to their present form.

There is the same right of appeal under this Act as in ordinary County Court actions: *Vide* County Court Act, 1888, s. 120.

"In Scotland any action," &c. By virtue of sect. 14 and para. (17), (b) of Schedule II. of the Workmen's Compensation Act, 1906, this paragraph is, in cases of injuries arising out of and in the course of the workman's employment, repealed,

(q) [1894] A. C. 494. See *Peninsular, &c. Navigation Co. v. Tsune Kijima*, [1895] A. C. 661; *Stroud v. Lawson*, [1898] 2 Q. B. 44.

and there is substituted for the rights thereunder a right of appeal by means of case stated solely on questions of law to the Court of Session, with an ultimate right of appeal to the House of Lords.

See the notes on sect. 14 of the Workmen's Compensation Act, 1906, *infra*.

Mode of
serving notice
of injury.

7. Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business; and, if served by post, shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post; and, in proving the service of such notice, it shall be sufficient to prove that the notice was properly addressed and registered.

Where the employer is a body of persons corporate or unincorporate, the notice shall be served by delivering the same at or by sending it by post in a registered letter addressed to the office, or, if there be more than one office, any one of the offices of such body.

A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading.

As to sufficiency of "address," see *Briggs v. Ross* (1868), L. R. 3 Q. B. 268.

In *Clarkson v. Musgrave* (1882), 9 Q. B. D. 386, where the notice was alleged to be defective, Cave, J., said:—"The notice is not required to state the cause of action, but only the cause of injury." In *McGowan v. Tonerred, Arrol & Co.* (1886), 13 R. 1633, it is pointed out that the effect of registration is to raise a presumption of receipt; though it leaves it open, in case of no registration, for the plaintiff and defendant to prove actual receipt or non-receipt respectively: see *Adams v. Nightingale* (1882), 72 L. T. N. S. 424.

The following form of notice is suggested by the authors of the Yearly County Court Practice:—

"To Mr. John Smith, of Street, Bristol,
Builder.

Please take notice that on the day of , 1882, George Jones, of No. 1, George Street, in the parish of , in the City of Bristol, was killed [or was injured] by a defective rope, forming part of your plant, breaking and causing him to fall to the ground from a great height, while he was working at [the houses in course of erection by you] in Narrow Wine Street in Bristol aforesaid.

Dated this day of , 1882.

Yours, &c.,

JANE JONES,

Wife of [or 'Solicitor for,' or 'on behalf of'] the said George Jones."

The first four paragraphs of this section are substantially reproduced in the Workmen's Compensation Act, 1906, s. 2, sub-ss. (2) - (4).

Cf. the provisions of the Workmen's Compensation Act, 1906, s. 2, sub-s. (1), as to defect or inaccuracy in the notice.

8. For the purposes of this Act, unless the context otherwise requires— Definitions.
The expression "person who has superintendence entrusted to him" means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour.

See the note on sect. 1, sub-sect. (2), *supra*.

The expression "employer" includes a body of persons corporate or unincorporate.

Cf. the definition of "employer" in the Workmen's Compensation Act, 1906, s. 13.

The expression "workman" means a railway servant and any person to whom the Employers and Workmen Act, 1875, applies.

See the notes on sects. 10, 12 and 13 of the Employers and Workmen Act, 1875, *supra*, and on "Workmen to whom the Act applies" at p. 631, *supra*.

9. [Repealed by Statute Law Revision Act, 1894.]

10. This Act may be cited as the Employers' Liability Act, 1880, and shall continue in force till the thirty-first day of December, one thousand eight hundred and eighty-seven, and to the end of the then next session of Parliament, and no longer, unless Parliament shall otherwise determine, and all actions commenced under this Act before that period shall be continued, as if the said Act had not expired.

Commence-
ment of Act.
Short title.

The Act has been continued annually since the date of its expiration.

COUNTY COURT RULES, 1903 AND 1904.

ORDER XLIV.

THE EMPLOYERS' LIABILITY ACT, 1880.

Service of Summons.

1. A summons in an action brought under the Employers' Liability Act, 1880, shall in order to ensure its service be delivered to the bailiff, where it is to be served in the home district thirty-five clear days at least, and where it is to be served in a foreign district thirty-eight clear days at least before the return day, and shall in either case be served thirty clear days at least before the return day thereof.

Time for issue
and service of
summons.
43 & 44 Vict.
c. 42.

2. Particulars of demand shall be filed by the plaintiff at the time of the entry of the plaint, whatever the amount claimed may be; and a copy thereof shall be forthwith sent to the judge.

Particulars to
be filed.

3. The particulars of demand shall state in ordinary language the cause of the injury, and the date at which it was sustained, and the amount of compensation claimed, and where the action is brought by more than one plaintiff, the amount of compensation claimed by each plaintiff; and where

What parti-
culars of
demand shall
state.

the injury of which the plaintiff complains is alleged to have arisen by reason of the act or omission of any person in the service of the defendant, the particulars shall give the name and description of such person.

Jury.

Notice of demand for jury.
Forms 142, 143, 144.

4. Notice of demand for a jury shall be given in writing to the registrar, according to the form in the Appendix, fifteen clear days at least before the return day, and the registrar shall forthwith give notice thereof to the other party, according to the form in the Appendix; and the summonses to the intended jurors shall be delivered to the bailiff forthwith.

Assessors.

Qualification of assessors.

5. Any person who shall, as herein-after provided, be appointed by the judge to act as an assessor in any action, shall be qualified so to act.

How assessors to be applied for.

Form 136.

6. Where no demand for a jury has been made, a party who desires assessors to be appointed shall, ten clear days at least before the return day, file an application according to the form in the Appendix, stating the number of assessors he proposes to be appointed, and the names, addresses, and occupations of the persons who may have expressed their willingness in writing to act as assessors. If the applicant has obtained the consent of the other party to the persons named being appointed, he shall file such consent with his application.

Form 136 is as follows:—

No. of Plaintiff.

In the County Court of holden at
Between *A. B.*, Plaintiff,
and
C. D., Defendant.

Ord XLIV.
r. 6.

The plaintiff [*or defendant*] applies to have an assessor [*or assessors*] appointed to assist the Court in ascertaining the amount of compensation to be awarded to the plaintiff, should the judgment be in his favour; and he submits the names of the following persons, who have expressed their willingness in writing to act as assessors, should they be appointed.

(*Here set out the names, addresses and occupations of the persons above referred to.*)

* The defendant [*or plaintiff*] consents to the appointment of the assessor [*or assessors*] herein named, as appears by his consent thereto filed herewith.

Dated this day of 19 .

Plaintiff [*or defendant*].

Memorandum of Consent by Judge.

I consent to try this action with the assistance of an assessor [*or assessors*] [*or as the case may be*].

Judge.

Application made by one party only to be forwarded to the other party.

Form 138.

7. Where an application for the appointment of assessors is made by only one party to an action, the registrar shall forthwith cause to be served on the other party notice of the application according to the form in the Appendix, and the party so served shall as soon as may be after the receipt of the notice—

- (1) inform the registrar in writing whether or not he accepts the appointment of the assessors proposed in such notice, or any of them; and
- (2) if he objects to any of the persons proposed, state in writing the reasons for such objection; and

- (3) if he desires any other assessors to be appointed, file an application for such appointment in accordance with Rule 6 of this Order.

8. Where separate applications are filed by the parties, no objection to the persons proposed shall be made by either party, but the judge may appoint from the persons named in each application one or more assessors, provided that the same number of assessors be appointed from the names given in such applications respectively.

Where both parties propose assessors.

9. The applications for the appointment of assessors, together with any objections made to the persons proposed, shall be forwarded by the registrar to the judge.

Applications to be forwarded to judge.

10. Where the judge grants an application for the appointment of assessors, he shall appoint such of the persons proposed for assessors as he may think fit, subject to the provisions contained in this Order, and return the applications with such appointment to the registrar, and thereupon the registrar shall forthwith summon the assessors named. If the judge does not think fit that assessors shall be summoned, notice thereof shall be given by the registrar to all parties according to the form in the Appendix.

Appointment of assessors by judge. Summoning of assessors. Refusal to appoint. Form 137. Form 141.

11. In any action where no demand for a jury has been made, and an application for the appointment of assessors has been filed, the judge may, either before or on the return day, nominate one or more additional persons to act as assessor or assessors in the action. Where no application for assessors has been made, the judge may, if he thinks fit, appoint any one or more persons to act as assessors in the action before or on the return day. Any persons appointed under this rule shall be summoned by the registrar.

Judge, whether application made or not, may appoint assessors. Form 137.

12. If at the time and place appointed for the trial all or any of the assessors appointed do not attend, the judge may either proceed to try the action with the assistance of such of the assessors, if any, as attend, or he may adjourn the trial generally, or upon any terms which he may think fit; or he may appoint any person who may be available and who is willing to act, and who is not objected to, or who is objected to on some insufficient ground; or the judge may try the action without assessors if he thinks fit.

Where assessors fail to attend.

13. Every person nominated as an assessor shall receive for each day's attendance in every action the sum of two guineas, together with such further sum, if any, for his expenses, as the judge may order.

Remuneration of assessors.

14. Every person applying for the appointment of assessors shall at the time of filing his application deposit with the registrar the sum of two guineas for each assessor proposed, and such payment shall be considered as costs in the action, unless otherwise ordered by the judge. Provided that where a person proposed as an assessor has in writing informed the registrar that he does not require his remuneration to be so deposited, no deposit in respect of such person shall be required. Where an action is adjourned, the party at whose instance any assessor has been summoned shall pay such assessor's fee for the day of adjournment forthwith after the order of adjournment is made.

Deposit of remuneration on application for assessors.

Fees on adjournment.

15. Where an action is tried by the judge with the assistance of any assessors in addition to or independently of any assessors proposed by the parties, the remuneration of such assessors shall be borne by the parties or either of them as the judge shall direct.

Remuneration of assessors not proposed by the parties but appointed by judge.

Allowance to assessor when services not required.

16. If after an assessor has been appointed, and before the day of trial the registrar is satisfied that the action has been settled or that the services of such assessor are not required, he shall forthwith countermand the attendance of such assessor, and pay to him one half of the fees paid for his attendance. The other half, less the cost of telegrams and postages, shall be returned by the registrar to the person by whom the fees were paid.

Assessors to sit with judge.

17. The assessors shall sit in court with the judge, and assist him when required with their opinion and special knowledge for the purpose of ascertaining the amount of compensation, if any, which the plaintiff is entitled to recover.

Judgment where several Plaintiffs.

Where more plaintiffs than one, compensation due to each to be found separately.

18. Where two or more persons are joined as plaintiffs under Ord. III., r. 1, and the negligence, act, or omission which is the cause of action is proved, the judgment shall be for all the plaintiffs, but the amount of the sum awarded for damages and the costs ordered to be paid to each plaintiff shall be found and set forth separately in the judgment, and the amount of costs awarded in the action shall be ordered to be paid to such person and in such manner as the judge may think fit.

See note on sect. 6 of the Act, *supra*.

Execution in such cases, and apportionment of sum realized.

19. If the defendant fails to pay the several amounts of compensation and the costs awarded in the action, execution against his goods may issue as in an ordinary action; and if the proceeds of the execution are insufficient, after deducting all costs, to pay the whole of the amounts awarded, such proceeds shall, after the deduction of all the costs of the action as aforesaid, be apportioned between the several plaintiffs in proportion to the amounts awarded to them respectively.

II. *Lord Campbell's Act.*

9 & 10 VICT. c. 93 (1846).

An Act for compensating the Families of Persons killed by Accidents.

Section 1 enacts "That whensoever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been under such circumstances as amount in law to felony."

Section 2: "That every such action shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or adminis-

trator of the person deceased, and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting the costs not recovered, from the defendant, shall be divided amongst the before-mentioned parties in such shares as the jury by their verdict shall find and direct."

Section 5 enacts "That the word 'parent' shall include father and mother, and grandfather and grandmother, and stepfather and stepmother; and the word 'child' shall include son and daughter, and grandson and granddaughter, and stepson and stepdaughter."

27 & 28 VICT. c. 95 (1864).

An Act to amend the Act 9 & 10 Vict. c. 93, for compensating the Families of Persons killed by Accident.

Section 1 enacts "That if there shall be no executor or administrator of the person deceased, or that there being such executor or administrator no such action as in the said Act mentioned shall within six calendar months after the death of such deceased person as therein mentioned have been brought," "such action may be brought by and in the name or names of all or any of the persons (if more than one) for whose benefit such action would have been, if it had been brought by and in the name of such executor or administrator."

As to the nature of the cause of action under these statutes, see *Seward v. Vera Cruz* (1884), 10 A. C. 59, 67, per Selborne, C.

An illegitimate child is not within these statutes: *Dickinson v. North Eastern Rail. Co.* (1863), 33 L. J. Ex. 91. Cf. the definition of "dependants" in sect. 13 of the Workmen's Compensation Act, 1906. But a child *en ventre sa mère* is within them: *The George and Richard* (1871), L. R. 3 A. & E. 466.

Compensation under these Acts ought not to include compensation for wounded feelings, funeral expenses, family mourning: *Blake v. Midland Rail. Co.* (1852), 18 Q. B. 93; *Dalton v. South Eastern Rail. Co.* (1858), 4 C. B. N. S. 296; *Pym v. Great Northern Rail. Co.* (1862), 4 B. & S. 396; *Clark v. London General Omnibus Co.*, [1906] 2 K. B. 648.

A parent who sues in respect of the death of a child, must produce evidence of pecuniary benefit from the child's labour: *Duckworth v. Johnson* (1859), 4 H. & N. 653; *Condon v. Great Southern and Western Rail. Co.* (1865), 16 Ir. C. L. 415; *Sykes v. North Eastern Rail. Co.* (1875), 44 L. J. C. P. 191. In *Hetherington v. North Eastern Rail. Co.* (1882), 9 Q. B. D. 160, which was an action under the Employers' Liability Act by the father of a deceased servant of the company, the evidence was that his son used to contribute to his support; that five or six years ago when he was out of work his son helped him; but that he had not done so since. The Queen's Bench Divi-

sion, disagreeing with the ruling of the county court judge, decided that there was such a reasonable expectation of pecuniary advantage to the father by his son's life as to justify the case going to a jury.

Compensation to an injured workman ought not to be reduced by the amount of insurance money received by him, but such a deduction ought to be made when his representatives sue; *Bradburn v. Great Western Rail. Co.* (1874), L. R. 10 Ex. 1; *Gillard v. Lancashire and Yorkshire Rail. Co.* (1848), 12 L. T. O. S. 356. As to the rights of executors, see *Bradshaw v. Lancashire and Yorkshire Rail. Co.* (1875), L. R. 10 C. P. 189; and *Leggott v. Great Northern Rail. Co.* (1876), 1 Q. B. D. 599.

These Acts apply as well for the benefit of the representatives of a deceased foreigner as for those of a British subject, at all events as against an English wrong-doer: *Davidson v. Hill*, [1901] 2 K. B. 606, *overruling* the decision in *Adam v. The British and Foreign Steamship Co., Ltd.*, [1898] 2 Q. B. 430.

See, as to the effect of sect. 1 of the Public Authorities Protection Act, 1893, upon sect. 3 of Lord Campbell's Act, which provides that the action is to be commenced within twelve months after the death, *Markey and another v. The Tolworth, &c. Board*, [1900] 2 Q. B. 454; *Williams v. Mersey Docks and Harbour Board*, [1905] 1 K. B. 804.

III. *The Workmen's Compensation Act, 1906.*

N.B.—The Workmen's Compensation Acts, 1897 and 1900, continue to apply to cases of accidents which happened before July 1, 1907.

The decisions upon those Acts, where they apply to the Workmen's Compensation Act, 1906, are referred to in the notes to the last-mentioned statute; where they have been modified or rendered obsolete, the fact is noted.

New provisions in the Act are printed in italics.

Before dealing in detail with the provisions of the statute which came into operation on 1st July, 1907, its chief effects may be stated:—

- (1) It does not repeal the Employers' Liability Act, 1880;
- (2) It applies to all employments, including domestic service; the only exceptions being those mentioned in the definition of "workman" in sect. 13, and "seamen" not within the proviso in sect. 7, sub-sect. (1);
- (3) It abolishes the power of "contracting out," except on certain conditions (sect. 3);
- (4) It gives a right to compensation for all personal injuries "by accident arising out of and in the course of the employment" (sect. 1, sub-sect. (1)), even when there is no negligence on the part of the employer or his

- servants; the only exception is "serious and wilful misconduct" of the workman, and that only within certain limits (sect. 1, sub-sect. (2) (c));
- (5) It substitutes arbitration for an action at law ;
 - (6) It gives rights of compensation not only to workmen, but to their personal representatives and "dependants" (sect. 13) ;
 - (7) It makes "principals" liable to the workmen of contractors or sub-contractors (sect. 4) ;
 - (8) The workman may sue under the Act, at common law, or under the Employers' Liability Act, 1880 ; and, if he fail to recover in his *action*, may have compensation assessed under the Act, when the Act applies, by the court which has tried the action (sect. 1, sub-sects. (1) (b) and (4)) ;
 - (9) The defence of *volenti non fit injuria*—whatever of it, that is, survives the decision in *Smith v. Baker*, [1891] A. C. 325—ceases to exist, save in so far as it may be an instance of "serious and wilful misconduct" ;
 - (10) Contributory negligence is immaterial, except where it amounts to "serious and wilful misconduct."

This Act has effected very great changes in the statutory liability of employers, as compared with what it was under the Workmen's Compensation Acts, 1897 and 1900. Among those changes may be noted the following:—

- (1) It embraces all forms of employment (including domestic service), save those expressly excluded in the definition of "workman" in sect. 13, and "seamen" not within the proviso in sect. 7, sub-sect. (1). All the decisions, therefore, on the nature of the special employments, mentioned and defined in sect. 7, sub-sect. (1) of the Act of 1897 become obsolete.
- (2) The industrial diseases mentioned in Schedule III.—to the number of which the Secretary of State has power to add by order—are within the Act (sect. 8).
- (3) Seamen and apprentices to the sea-service, within certain limits, come under the Act (sect. 7). Rights *in rem* against the ship in certain cases are given (sect. 11).
- (4) In case of the bankruptcy or winding-up of the employer, the employer's rights against insurers vest in the work-

- man; if there be no insurers, the workman is given certain rights under the Preferential Payments in Bankruptcy Act, 1888 (sect. 5).
- (5) If the employer lend a servant or let a servant out on hire, he remains liable under the Act (sect. 13). This solves, for the purposes of the Act, a much-vexed question: see p. 15, *supra*.
 - (6) "Dependants" includes the relation existing between a grandparent or parent and an illegitimate child (sect. 13), always supposing there be dependency.
 - (7) In sect. 4, which deals with sub-contracting, the term "undertaker" disappears and is replaced by "principal"; as does the exemption from liability when the work contracted for is merely "ancillary or incidental" to the undertaker's business. The word "undertake" still appears in sub-sects. (1) and (4) and may be a source of difficulty. Sub-sect. (4) is the only place in the Act where the expression "on, in or about" occurs.
 - (8) "Serious and wilful misconduct" is no defence where "death or serious and permanent disablement" results (sect. 1, sub-sect. (2) (c)).
 - (9) The minimum period of disablement, in order to entitle the workman to compensation, is reduced from "two weeks" to "one week" (sect. 1, sub-sect. (2) (a)).

Persons to whom the Act applies.

"Employer" includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer, *and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for that other person* (sect. 13).

The words in italics are new; see notes on this section, *infra*.

The first part of this definition effected a great change in the law. Till the Act of 1897, all actions for compensation, *as against the employer*, had fallen within the maxim *actio personalis moritur cum personâ*; but, by virtue of these words, they survive against an employer's representatives.

"Workman" does not include any person employed otherwise than by way of manual labour whose remuneration exceeds two hundred and fifty pounds a year (qq), or a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, or a member of a police force, or an out-worker, or a member of the employer's family dwelling in his house, but, save as aforesaid, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing.

Any reference to a workman who has been injured shall, when the workman is dead, include a reference to his legal personal representative or to his dependants or other person to whom or for whose benefit compensation is payable (sect. 13).

The words in italics are new.

The Act of 1897 applied only to certain specified employments: this Act applies to all employments save those specifically excluded, provided there be a contract of "*service*." As to what constitutes a contract of service, see pp. 7 *et seq.*, *supra*.

The terms "dependants," "member of a family," "police force," and "out-worker" are defined in the Act; as is the expression "trade or business" in the case of a public authority.

The words "who has entered into or works under a contract with an employer" are taken from sect. 10 of the Employers and Workmen Act, 1875, *vide* p. 616, *supra*.

"It seems to me that the words 'or works under a contract with an employer' were inserted into the section to meet the case of a workman who has not contracted directly with an employer, but has been engaged by an agent of the employer to work for the employer—*videlicet*, by a 'butty-man' or a 'ganger,' or to meet the case of an apprentice or other similar cases": *Marrow v. Flimby, &c.*, [1898] 2 Q. B. 588, 597, per A. L. Smith, L. J.

" . . . other person to whom or for whose benefit," &c., *i.e.*, the person entitled to medical and burial expenses under Schedule I. (1) (a) (iii), and cases under paragraphs (5) and (7) of Schedule I.

Having regard to the fact that a householder, as such, has no "trade or business," he would not be liable in case of an accident, *e.g.*, to a charwoman or window-cleaner casually employed at his private residence. As to what is "casual" employment, see *Hill v. Begg* (1908), 24 Times L. R. 711. It may be noted that

(qq) The remuneration of a ship-captain consisted of 216*l.* in cash and his board in addition. *Held*, that the test of the money value of the board was not what the captain could have boarded himself for, but what it would have cost him to purchase the board provided, himself: *Dothie v. Robert Macandrew & Co.*, [1908] 1 K. B. 803.

this point is dealt with, in the case of a public authority, by a special definition of "trade or business."

Compensation under the Act being based on "earnings," the gratuitous performance of work is not within the Act.

A sub-contractor is not a "workman" within this definition: *Simmons v. Faulds* (1901), 17 T. L. R. 352; *Vamplex v. Parkgate, &c. Co., Ltd.*, [1903] 1 K. B. 851; nor is a member of a mining partnership, who, by arrangement with his partners, works in the mine as a working foreman, and receives weekly wages out of the profits of the business: *Ellis v. Joseph Ellis & Co.*, [1905] 1 K. B. 324; nor is the certificated manager of a coal-mine, who is paid a yearly salary, and who, though his duties require his presence in the mine, is not required to engage in manual labour: *Simpson v. Ebbw Vale, &c. Co.*, [1905] 1 K. B. 453.

"Dependants" means such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, *or would, but for the incapacity due to the accident, have been so dependent, and where the workman, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, shall include such an illegitimate child and parent or grandparent respectively.*

"Member of a family" means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother, half-sister (sect. 13).

The words in italics are new.

These definitions apply to Scotland as well as England and Ireland, and add collateral relations to those mentioned in the Fatal Accidents Act, 1846, s. 5.

"Dependency" is a question of fact: *Main Colliery Co. v. Davies*, [1900] A. C. 358; *Rees v. The Penrhyber, &c. Co.*, [1903] 1 K. B. 259.

See the notes on sect. 13, *infra*.

As to the application of this Act to workmen under the Crown, see sect. 9; and to "seamen," &c., see sect. 7.

Defences to Claims.

The following are the chief defences available to an employer:—

(A) That the injury is attributable to the "serious and wilful misconduct" of the workman (sect. 1, sub-sect. (2) (c)).

But, under this Act, this defence is not available in cases of "death or serious and permanent disablement."

Misconduct or contributory negligence will not suffice, it must

be "serious and wilful;" and the accident must be "attributable" thereto: see *Glasgow Coal Co. v. Sneddon* (1905), 7 F. 485.

"Wilful misconduct" has been defined as "misconduct to which the will is a party; something opposed to accident or negligence; the misconduct, not the conduct, must be wilful": *Lewis v. Great Western Rail. Co.* (1877), 3 Q. B. D. 195, 206, per Bramwell, L. J.; see *In re Mayor of London and Tubbs' Contract*, [1894] 2 Ch. 524.

This defence is only available against the individual guilty of the misconduct. But if others are involved in the consequences of the misconduct they may find it difficult to prove that the accident arose "out of and in the course of the employment": see notes on p. 652, *infra*.

The misconduct is a question of fact in each case: *Rumboll v. Nunnery Colliery Co.* (1899), 80 L. T. 42; *Johnson v. Marshall, Sons & Co., Ltd.*, [1906] A. C. 409. And the burden of proving it is on the employers: *Johnson v. Marshall, ubi sup.*

A boy, employed to grease truck-wheels, meddles with a points-lever on a railway, in an interval of his work: *Harrison v. Whitaker Brothers* (1899), 16 T. L. R. 108; a fireman in a mine, when taking his report to the office, rides, against regulations, in a truck: *Rees v. Thomas*, [1899] 1 Q. B. 1014; a workman leaves a shed carelessly, it may be, by a forbidden door: *McNicholas v. Dawson*, [1899] 1 Q. B. 775; a boy leans over a circular saw to pick up a screw: *Recks v. Kynoch* (1902), 18 T. L. R. 34. In all these cases there was a finding, either undisturbed or approved on appeal, that there was not "serious and wilful misconduct." In *Rumboll v. Nunnery Colliery Co.* (1899), 80 L. T. 42, the Court of Appeal held that the breach of a rule (as to propping the roof) made under the Coal Mines Regulation Act, 1887, is not *per se* conclusive evidence of "serious and wilful misconduct": see *McNicol v. Speirs, Gibbs & Co.* (1899), 36 Sc. L. R. 428. So in *Johnson v. Marshall, Sons & Co., Ltd.*, [1906] A. C. 409, the workman's breach of a rule, which did not in itself involve danger, was held not to be evidence of "serious and wilful misconduct."

"The misconduct, therefore, is reduced to the bare breach of a rule, from which breach no injuries, actionable or otherwise, could reasonably be anticipated. Does this amount to serious misconduct? In my opinion it does not": per Lord James of Hereford, *l. c.* p. 413.

Lord Atkinson (p. 416) says:—

"If the word 'serious' used in this connection is to have any force or weight at all given to it, it must, I think, be held to mean at least that when

the risk of loss or injury resulting to any person or thing from the doing of any particular act is very remote, or where that loss or injury, even if probable, would be trivial in its nature and character, the doing of that act, however wilful, would not amount to 'serious misconduct' within the meaning of this statute, unless, indeed, the indirect influence of the act done on the discipline of the factory is to make every transgression serious."

But where a miner, after warning, persisted, with knowledge of the possible consequences, in doing the very thing against which he was warned, this defence defeated his claim: *John v. Albion Coal Co., Ltd.* (1902), 18 T. L. R. 27. An engine-driver left the footplate of his engine and mounted the tender while the engine was in motion, in breach of a rule of the railway company, well-known to him, prohibiting the act, and was killed by collision with a bridge. The county court judge found there was no justification for his act:—*Hehl*, that there was evidence upon which the judge might properly find that he was guilty of "serious and wilful misconduct": *Bist v. London & South Western Rail. Co.*, [1907] A. C. 209.

(B) That the accident did not arise "out of and in the course of the employment" (sect. 1, sub-sect (1)).

The onus of proving that the accident arose "out of" as well as "in the course of" the employment is on the applicant: *Pomfret v. Lancashire & Yorkshire Rail. Co.*, [1903] 2 K. B. 718.

The question is one of fact; and if there is evidence to support the arbitrator's finding, that finding cannot be disturbed: *Pomfret v. Lancashire & Yorkshire Rail. Co.*, *ubi sup.*; *Losh v. Richard Evans & Co., Ltd.* (1903), 19 T. L. R. 142.

In dealing with this point the control of the employer over the place where the accident occurs is an element to be considered. In *Holness v. Muckay and Davies*, [1899] 2 Q. B. 319, the Court of Appeal refused compensation on this ground to the widow of a workman who was killed by a train on the main line, which adjoined the siding upon which he was at work. Suppose carelessness or rashness or breach of regulations on the part of a workman in going from one part of his master's premises to another, that by itself will not disentitle him from recovering compensation, "though probably there may be acts of negligence on the part of a workman so entirely outside his employment as to prevent an accident following on the negligent act from being described as arising out of his employment": *McNicholas v. Dawson and Son*, [1899] 1 Q. B. 773, 779, per Collins, L. J.

This defence succeeded where a workman was injured while

doing something, during work hours, merely for his own pleasure: *Smith v. Lancashire & Yorkshire Rail. Co.*, [1899] 1 Q. B. 141. In such cases, the decisive question is "Did the particular Act constitute a break in the employment?" A workman was held entitled to recover compensation who was injured while eating his dinner on his master's premises, though he was paid by the hour, and the dinner-hour was excluded from the computation of his wages: *Blorell v. Sawyer*, [1904] 1 K. B. 271. See *Morris v. Mayor, &c. of Lambeth* (1905), 22 T. L. R. 22.

In the cases of accidents occurring to workmen when going to or coming from work, the decision turns on the question: "When did the employment begin," or "cease," as the case may be? That is a question of fact: *Smith v. South Normanton Colliery Co.*, [1903] 1 K. B. 204. The proposition that the "employment" does not begin till the man's actual work begins is a misdirection in law: *Sharp v. Johnson*, [1905] 2 K. B. 139. A workman was killed outside his master's premises, going to his work, before work-hours: *Holness v. Mackay and Davies*, [1899] 2 Q. B. 319; a workman was injured on a private railway belonging to his employers, used by the workmen at their will, as a convenience for getting home: *Davies v. Rhymney Iron Co., Ltd.* (1900), 16 T. L. R. 329 (*v*); an engine-driver was killed on his way to the engine shed from a visit which took him out of his way and which had been paid for purposes of his own private business: *Benson v. Lancashire & Yorkshire Rail. Co.*, [1904] 1 K. B. 242. In all these cases the claim for compensation failed. But it is different where the contract of employment expressly or impliedly includes the going to or coming from work: *Holmes v. Great Northern Rail. Co.*, [1900] 2 Q. B. 409; *Cremins v. Guest, Keen & Nettlefolds, Ltd.*, [1908] 1 K. B. 469. See *Holness's Case*, *ubi sup.* It must be remembered that the element of physical contiguity to the place of employment at the moment of injury, in so far as it was involved in the words "on, in or about," in sect. 7 of the Act of 1897 (see *Powell v. Brown*, [1899] 1 Q. B. 157), does not exist under this Act.

The injury must be connected with the work which the applicant is employed to do. Thus a lad employed to make balls of clay, who injured himself in trying to clean machinery, which he was forbidden to touch, failed to get compensation: *Lowe v.*

(*v*) This point is considered, in connection with the defence of "common employment" raised to a claim under Lord Campbell's Act, in *Coldrick v. Partridge, Jones & Co., Ltd.* (1908), 24 Times L. R. 646.

Pearson, [1899] 1 Q. B. 261; *Losh v. Richard Evans & Co.* (1903), 19 T. L. R. 142; see *Harrison v. Whitaker* (1899), 16 T. L. R. 108. Where a carpenter, whose duty it was to sharpen his tools at a grindstone turned by machinery, which he was forbidden to touch, was injured while replacing the band on the machinery, the Court of Appeal refused to disturb the finding that the accident arose "out of and in the course of the employment": *Whitehead v. Reader*, [1901] 2 K. B. 48 (s). In *Rees v. Thomas*, [1899] 1 Q. B. 1014, a mine-fireman was going to the office with his report in a horse-tramway truck which belonged to his master: the horse bolted and he was injured trying to stop it. The Court of Appeal decided in his favour on two grounds: (1) that he was in fact engaged upon his employment when the accident happened, and (2) that it is a part of every servant's employment to act in an emergency for the interests of his master.

Where the injury is caused by a danger, the risk of exposure to which is a necessary or recognized concomitant of the particular employment, this defence fails: as where an engine-driver is injured in consequence of a stone thrown by a boy hitting his engine: *Challis v. London and South Western Rail. Co.*, [1905] 2 K. B. 154; or where a bricklayer, working on a scaffolding, is struck by lightning: *Andrew v. Failsworth, &c.*, [1904] 2 K. B. 32; or where a man, working on the edge of a hatchway, is seized by epilepsy, and falls down the hatchway: *Wicks v. Dowell*, [1905] 2 K. B. 225.

With regard to accidents arising from the act or negligence of a third party, see sect. 6 of the Act and the notes thereon, *infra*. To entitle the workman to compensation under that section the injury must be one within sect. 1, sub-sect. (1). An injury by accident due to the tortious act of a fellow-servant, which has no relation to the employment, does not arise "out of" the employment: *Armitage v. Lancashire & Yorkshire Rail. Co.*, [1902] 2 K. B. 178.

(C) That the employment is not within the Act. (See the notes on "Persons to whom the Act applies," at p. 648, *supra*; and on sect. 13, *infra*.)

(D) That the injury is not a personal injury by "accident" (sect. 1, sub-sect. (1)).

(s) This decision turned partly on the form of the county court judge's note.

The Act gives no definition of "accident." In Webster's dictionary "accident" is defined as "An event which takes place without one's foresight or expectation; an evil which proceeds from an unknown cause, and therefore not expected."

In *Hensey v. White*, [1900] 1 Q. B. 481, the Court of Appeal adopted Lord Halsbury's definition in *Hamilton v. Pandora* (1887), 12 A. C. 518, 524, viz., that the word "accident" involves "the idea of something fortuitous and unexpected." But since the decision of the House of Lords in *Fenton v. Thorley*, [1903] A. C. 443, which overruled *Hensey v. White*, *ubi sup.*, and *Roper v. Greenwood* (1900), 83 L. T. (N. S.) 471, "accident" in this Act must be construed in its "popular and ordinary sense . . . as denoting an unlooked-for mishap or an untoward event which is not expected or designed": per Lord Macnaghten, *l. c.* at p. 448. In *Fenton's Case* a perfectly healthy man ruptured himself by over-exertion in attempting to turn a wheel. Where a smith was holding a flatter on the anvil and had his hand jarred by a blow delivered on the wrong part of the flatter by his fellow-workman, he was held entitled to recover, though the injury was aggravated by a gouty tendency: *Lloyd v. Sugg*, [1900] 1 Q. B. 481. A man ruptures himself, lifting planks which are stuck together by rain and frost: *Timmins v. Leeds Forge Co.* (1900), 16 T. L. R. 521; a collier dies of blood-poisoning caused by the penetration of a piece of coal into his knee: *Thompson v. Ashington Coal Co.* (1901), 17 T. L. R. 345; the muscles of the back are lacerated by the strain of an extra lift given to get a beam on to the shoulder: *Boardman v. Scott and Whitworth*, [1902] 1 K. B. 43; all these are injuries by "accident."

With regard to industrial diseases due to the nature of the employment, this Act has an entirely new set of provisions: see sect. 8, and the Third Schedule. The decisions in *Walker v. Lilleshall*, [1900] 1 Q. B. 488, and in *Steel v. Cammell, Laird & Co.*, [1905] 2 K. B. 232, do not stand under the new Act; while *Higgins v. Campbell*, [1904] 1 K. B. 328, and *Brintons v. Turvey*, [1905] A. C. 230, are cases of anthrax, and come expressly within the Third Schedule.

It would appear that Collins, M. R., is prepared to hold that "shock to the nerves" comes within the Act as "injury by accident": see *Pugh v. London Brighton and South Coast Rail. Co.*, [1896] 2 Q. B. 248, and the passage in his judgment in *Wicks v.*

Douell, [1905] 2 K. B. 225, beginning "It is said that these decisions," . . . at p. 228.

- (E) That the workman has contracted out of the Act (sect. 3).
(See the notes on "Contracting out," at p. 657, *infra*, and on sect. 3 of the Act.)
- (F) That the injury has not disabled the workman for a period of at least one week from earning full wages at the work at which he was employed (sect. 1, sub-sect. (2) (a)).

See the First Schedule (1) (b), proviso (a). Under the Act of 1897, compensation for the first fortnight was absolutely excluded; under this Act, if the incapacity lasts for two weeks or more, compensation is payable as from the time of the accident.

The principle of *Chandler v. Smith*, [1899] 2 Q. B. 506, applies under this Act.

- (G) Want of or defect in "Notice of the accident" (sect. 2, sub-sect. (1)). See notes on sect. 2, *infra*.
- (H) That a "claim for compensation" was not made within six months from the injury or death (sect. 2, sub-sect. (1)).
See notes on sect. 2, *infra*.
- (I) In case of a claim by "dependants":—
 - (i) That they are not within the necessary degree of relationship (sect. 13).
 - (ii) That they were not "dependent" on the deceased (sect. 13).

See notes on "Persons to whom the Act applies," at p. 648, *supra*; and on sect. 13, *infra*.

- (K) That the applicant has recovered damages for the injury independently of the Act (sect. 1, sub-sect. (2) (b)).
See notes on sect. 1, sub-sects. (2) (b) and 4, *infra*.
- (L) There are conditions as to "medical examination" which, until satisfied, suspend the workman's rights (First Schedule, paras. (4), (14), (15), (20)); and there are matters to be considered in calculating the amount of compensation (First Schedule, para. (3)).

Defences arise out of the terms of sect. 7 (application of Act to seamen) and sect. 8 (industrial diseases). As to the latter, see grounds (vi), (vii) and (viii) in para. 4 of Form 14 ("*Answers by respondents*") appended to the Workmen's Compensation Rules, 1907: *vide* p. 762, *infra*.

Contracting Out.

The only mode of "contracting out" contemplated by the Act is that permitted by sect. 3, which imposes the following conditions:—

- (i) The granting of a certificate by the Registrar of Friendly Societies that the scheme of compensation, benefit or insurance complies with the requirements mentioned in sub-sect. (1) ;
- (ii) Such certificate may be in force for a stated period of not less than five years; and may be renewed with modifications (sub-sect. (2)) ;
- (iii) The scheme must not contain a provision making its acceptance by the workman a condition of his hiring; and must contain provisions enabling the workman to withdraw from it (sub-sect. (3)) ;
- (iv) That the scheme is strictly observed and fairly administered; and that it continues to conform to all the requirements mentioned in sub-sect. (1) ;
- (v) That the employer is at all times ready to furnish accounts to and answer inquiries by the Registrar of Friendly Societies.

See notes on sect. 3, *infra*.

The Arbitrator (Schedule II.).

The arbitrator may be one of five kinds:—

- (1) A committee, representative of an employer and his workmen, with power to settle matters under the Act (Schedule II. (1)).

Committees to deal generally with disputes between master and men may be formed under the Conciliation Act, 1896 (59 & 60 Vict. c. 30).

- (2) A single arbitrator agreed on by the parties (Schedule II. (2)).
- (3) The county court judge of the district (Schedule II. (2)).
- (4) In England a single arbitrator appointed, under the Lord Chancellor's authority, by the county court judge (Schedule II. (3)).
- (5) In case of the arbitrator's death or refusal or inability to act, an arbitrator appointed, on the application of any party, by the county court judge (Schedule II. (8)).

Under the Act of 1897 (Schedule II. (7)), this application was to a judge of the High Court at Chambers.

1. The powers of a committee are—

- (1) To settle the matter (para. (1)) ;
- (2) To refer the matter to arbitration (para. (1)) ;
- (3) To submit a question of law to the county court judge (para. (4)) ;
- (4) To deal with costs within certain limits, subject to taxation and review (para. (7)) ;
- (5) To submit a matter for report to a medical referee (para. (15)) ;
- (6) To exercise, by virtue of an order of the Secretary of State, all or any of the powers given by this Act to county courts or county court judges (para. (16)).

This last provision, which is new, may, if used, tend to encourage the application to committees; but their inability, apart from powers given under para. (16), to enforce the attendance of witnesses or the production of documents—a power expressly conferred by Schedule II., para. (4), upon county court judges and arbitrators appointed by them—is a serious objection. (See note on para. (16).)

Paras. (6), (9) and (14) apply to proceedings before a committee ^(ss).

2. An agreed arbitrator has powers under para. (4) (submission of point of law); para. (7) (costs); para. (15) (reference to medical referee for report); but he has no power of enforcing the attendance of witnesses or the production of documents. Paras. (6), (9) and (14) apply in this case also.

Probably both a committee and an agreed arbitrator have power to administer the oath to witnesses under sect. 16 of the Evidence Act, 1851 (14 & 15 Vict. c. 99) ^(ss).

3. The county court judge sits as an arbitrator, and therefore has no jurisdiction to entertain an application for a new trial: *Mountain v. Parr*, [1899] 1 Q. B. 805. But see the new rule (r. 70), Workmen's Compensation Rules, 1907, providing for setting aside an award or order improperly obtained. The procedure before him is regulated by Workmen's Compensation Rules, 1907, rr. 8—27.

An appeal from his decision is only on a question of law, whether decided by himself as arbitrator or on submission to him by way of special case (Workmen's Compensation Rules, r. 32), and lies to the Court of Appeal. The procedure is regulated by

^(ss) Save as here mentioned, these tribunals have no special procedure.

R. S. C. Ord. LVIII. rr. 8, 20 ; and Ord. LIX. rr. 10, 12, 14, 16 (*t*).
(See Workmen's Compensation Rules, 1907, r. 71.)

An order for security for the costs of the appeal may be made : *Hall v. Snowden, Hubbard & Co.*, [1899] 1 Q. B. 503 ; for an appeal is in this respect not like a new trial (*tt*) : *Harwood v. Abrahams*, [1901] 2 K. B. 304. There ought to be a prior request for security made to the appellant : *Stanland v. North Eastern Steel Co.* (1906), 23 T. L. R. 1. See as to the duty of the county court judge to take a note, Workmen's Compensation Rules, 1907, r. 34 ; and as to proceedings subsequent to the decision of the Court of Appeal, Workmen's Compensation Rules, 1907, r. 72.

From the Court of Appeal an appeal lies in England to the House of Lords. As to Scotland and Ireland, see Schedule II. (17, b) and (18).

4. The procedure before an arbitrator appointed by the county court judge is regulated by Workmen's Compensation Rules, 1907, rr. 29—33. Rule 31 (1) provides : "On the day for proceeding with an arbitration being fixed, the registrar shall proceed according to Rule 14, and thenceforward the arbitration shall proceed in the same manner as an arbitration before the judge ; and these Rules shall apply and the officers of the Court shall act accordingly, with the substitution of the arbitrator for the judge."

It is submitted that, in spite of the wide terms of para. (3), he has not the jurisdiction to decide a point of law submitted to him. This was the view taken by the Rules Committee under the Act of 1897 ; and see r. 32 (1), Workmen's Compensation Rules, 1907. As to his remuneration, see sect. 10, sub-sect. (2), *infra*.

5. It would appear that a new arbitrator may be appointed under para. (8), in both cases, 2 and 4 (*supra*), but that, having regard to the Workmen's Compensation Rules, 1907, rr. 29 (e) and 40, the person appointed retains, for all purposes, the character of the arbitrator whom he replaces.

[*N.B.*—For further information regarding procedure, costs, &c., see the Workmen's Compensation Rules, 1907 (printed *infra*), and Schedule II. to the Act, and the notes there.]

The Compensation Payable.

The scale and conditions of compensation are fixed by the First Schedule to the Act : see the notes thereon, *infra*.

(*t*) Printed at p. 853, *post*.

(*tt*) But this rule as to new trials is no longer followed : *Wightwick v. Pope*, [1902] 2 K. B. 99.

WORKMEN'S COMPENSATION ACT, 1906.

6 EDW. 7, c. 58.

ARRANGEMENT OF SECTIONS.

Section.

1. Liability of employers to workmen for injuries.
2. Time for taking proceedings.
3. Contracting out.
4. Sub-contracting.
5. Provision as to cases of bankruptcy of employer.
6. Remedies both against employer and stranger.
7. Application of Act to seamen.
8. Application of Act to industrial diseases.
9. Application to workmen in employment of Crown.
10. Appointment and remuneration of medical referees and arbitrators.
11. Detention of ships.
12. Returns as to compensation.
13. Definitions.
14. Special provisions as to Scotland.
15. Provisions as to existing contracts and schemes.
16. Commencement and repeal.
17. Short title.

SCHEDULES.

An Act to consolidate and amend the Law with respect to Compensation to Workmen for Injuries suffered in the course of their Employment.

Liability of employers to workmen for injuries.

1.—(1) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as herein-after mentioned, be liable to pay compensation in accordance with the First Schedule to this Act.

“*Personal injury by accident.*” See notes at p. 654, *supra*.

“*Arising out of and in the course of his employment.*” See notes at p. 652, *supra*.

“*Workman*” and “*employer*” are defined in sect. 13.

See the notes on the First Schedule.

(2) Provided that—

(a) The employer shall not be liable under this Act in respect of any injury which does not disable the workman for a period of at least *one week* from earning full wages at the work at which he was employed :

The minimum period under the old Act was two weeks. See Schedule I. (1) (b), proviso (a).

A workman was employed in the same capacity, and, as a matter of grace, paid the same wages after an accident as before ; but his general wage-earning power at that work was decreased. It was held that the Act applied. A declaration of liability was made, leaving the compensation to be assessed when actual loss of wages occurred: *Chandler v. Smith*, [1899] 2 Q. B. 506. See Schedule II., para. (9) (b).

- (b) When the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act or take proceedings independently of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid:

See the notes on sub-sect. (4), *infra*.

This Act does not alter the rights of infants; and therefore where an infant has received compensation which he agrees to be "in satisfaction of all claims, &c.," he may still proceed at Common Law if it be found that the agreement as to compensation be not for his benefit: *Stephens v. Dudbridge Ironworks Co.*, [1904] 2 K. B. 225.

- (c) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall, *unless the injury results in death or serious and permanent disablement*, be disallowed.

The words in italics are new.

See the notes on "Defences to claims" at p. 650, *supra*.

(3) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether *the person injured is a workman to whom this Act applies*), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration, in accordance with the Second Schedule to this Act.

The words in italics are new.

If no such question has in fact arisen, the county court judge has no jurisdiction to make an award: *Field v. Longden*, [1902] 1 K. B. 47.

(4) If, within the time herein-after in this Act limited for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act. In any proceeding under this sub-section, when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act.

"Time . . . limited for taking proceedings." Six months: *Vide* sect. 2, sub-sect. (1).

The option given by this section must be exercised then and there at the conclusion of the action. The workman may not launch proceedings under this Act at a subsequent date: *Edwards v. Godfrey*, [1899] 2 Q. B. 333. And where the judge has assessed compensation under this sub-section, the plaintiff, though an infant, is estopped from appealing in the action: *Neale v. Electric and Ordnance Accessories Co. Ltd.*, [1906] 2 K. B. 558. But where the plaintiff's application to assess compensation has been made *pro forma* and adjourned, he may still appeal both in the action and the compensation proceedings: *Isaacs v. New Grand (Clapham Junction), Ltd.*, [1903] 1 K. B. 539.

This Act does not alter the law relating to infants; and therefore, where an infant has received the maximum compensation under the Act, which he has agreed to accept "in satisfaction of all claims," &c., he may still proceed at Common Law if it be found that the agreement be not for his benefit: *Stephens v. Dudbridge Ironworks Co., Ltd.*, [1904] 2 K. B. 225.

The Court has full discretion under this sub-section over the costs both of the action and of the compensation proceedings: *Cattermole v. Atlantic Transport Co.*, [1902] 1 K. B. 204. See Schedule II., cl. (7) and note there. See as to the form of the certificate and the recording of it by the registrar, Workmen's Compensation Rules, 1907, r. 51.

(5) Nothing in this Act shall affect any proceeding for a fine under the enactments relating to mines, factories, or workshops, or the application of any such fine.

The last clause of this sub-section in the Act of 1897 has been omitted.

See Coal Mines Regulation Act, 1887, ss. 59 *et seq.*; Metalliferous Mines Regulation Act, 1872, ss. 31 *et seq.*; Factory and Workshop Act, 1901, ss. 135 *et seq.*

Cf. sect. 5 of the Employers' Liability Act, 1880.

Time for
taking pro-
ceedings.

2.—(1) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death:

Provided always that—

- (a) the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake, absence from the United Kingdom, or other reasonable cause; and
- (b) the failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake, absence from the United Kingdom, or other reasonable cause.

(2) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which the accident happened, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3) The notice may be served by delivering the same at, or sending it by post in a registered letter addressed to, the residence or place of business of the person on whom it is to be served.

(4) Where the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to, the employer at the office, or, if there be more than one office, any one of the offices of such body.

The words in italics are new.

Under the Act of 1897 the failure to make a claim within six months was fatal.

The "claim for compensation" is not the same as the "request for arbitration"; it is a notice of claim for compensation sent to the employer: *Powell v. Main Colliery Co.*, [1900] A. C. 366. It need not be in writing: *Loze v. Myers & Sons*, [1906] 2 K. B. 265. The indefinite suspension of legal proceedings is provided against in the Workmen's Compensation Rules, 1907, r. 10.

There may be circumstances—*e.g.*, an admission of liability, followed by negotiations as to the amount of compensation—which estop the employer from raising the defence that six months have expired without a "claim" having been made: *Wright v. John Bagnall & Sons, Ltd.*, [1900] 2 Q. B. 240; *Rendall v. Hill's Dry Docks, &c.*, [1900] 2 Q. B. 245. See the explanation of this latter case in *Oliver v. Nautilus Steam Shipping Co.*, [1903] 2 K. B. 639.

3.—(1) If the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, *provides scales of compensation not less favourable to the workmen and their dependants than the corresponding scales contained in this Act, and that, where the scheme provides for contributions by the workmen, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this Act, and that a majority (to be ascertained by ballot) of the workmen to whom the scheme is applicable are in favour of such scheme*, the employer may, whilst the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act. Contracting out.

(2) The Registrar may give a certificate to expire at the end of a limited period of not less than five years, and *may from time to time renew with or without modifications such a certificate to expire at the end of the period for which it is renewed*.

(3) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring, *or which does not contain provisions enabling a workman to withdraw from the scheme*.

(4) If complaint is made to the Registrar of Friendly Societies by or on behalf of the workmen of any employer that *the benefits conferred by any scheme no longer conform to the conditions stated in sub-sect. (1) of this section*, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the Registrar shall examine into the complaint, and, if satisfied that good cause exist for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall, *after due provision has been made to discharge the liabilities already accrued*, be distributed as may be arranged

between the employer and workmen, or as may be determined by the Registrar of Friendly Societies in the event of a difference of opinion.

(6) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Registrar of Friendly Societies.

(7) The Chief Registrar of Friendly Societies shall include in his annual report the particulars of the proceedings of the Registrar under this Act.

(8) *The Chief Registrar of Friendly Societies may make regulations for the purpose of carrying this section into effect.*

The words in italics are new.

The protection afforded to the workman is both wider and more specific in its terms than under the Act of 1897.

The "annual report" referred to in sub-sect. (7) is made under sect. 6 of the Friendly Societies Act, 1896.

Regulations, dated July 1st, 1907, have been issued under sub-sect. (8): see p. 838, *infra*.

Sub-con-
tracting.

4.—(1) *Where any person (in this section referred to as the principal), in the course of or for the purposes of his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this Act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed:*

Provided that, where the contract relates to threshing, ploughing, or other agricultural work, and the contractor provides and uses machinery driven by mechanical power for the purpose of such work, he and he alone shall be liable under this Act to pay compensation to any workman employed by him on such work.

(2) *Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by arbitration under this Act.*

(3) *Nothing in this section shall be construed as preventing a workman recovering compensation under this Act from the contractor instead of the principal.*

(4) *This section shall not apply in any case where the accident occurred elsewhere than on, or in, or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.*

The words in italics are new.

There are many changes in this section. The word "principal" is new. The term "undertakers" vanishes, and with it—except in so far as it re-appears in the phrase "work undertaken by the principal"—the difficulty arising out of the definition of that term to which Lord Brampton gave effect in his dissenting judgment in *Cooper and Crane v. Wright*, [1902] A. C. 302. Such decisions as those in *Cooper and Crane v. Wright*, *ubi sup.*, and *McCabe v. Jopling*, §c., [1904] 1 K. B.

222, apply *a fortiori* under this Act, having regard to the far wider terms of sect. 1, and the definitions of "employer" and "workman" in sect. 13.

The key to the construction of sub-sect. (1) is in the words "in the course of or for the purposes of *his trade or business*." It is submitted that the "work undertaken by the principal" is work the performance of which is itself within the scope and ambit of the principal's business (which is a question of fact in each case), and the sub-contract must be made for the purpose of carrying out that work in whole or in part. It could not be suggested that a private person, who merely had a house built for himself, was a "principal": see *McGregor v. Dausken* (1899), 1 F. 536; *Stalker v. Wallace* (1900), 2 F. 1162.

See sect. 6, sub-sect. (2) as to the procedure for the indemnification by a stranger of a contractor who has had to indemnify the "principal" under this section.

The liability of the "principal" to pay compensation does not extend, as formerly in the case of "undertakers," to cases outside the Act; while, on the other hand, there is no exclusion from this section of cases of work "merely ancillary and incidental" to the principal's business. Both these changes are doubtless due to the wider scope of the present Act. Besides, the words "*for the purposes of his trade*," &c. seem to bring within the section many instances of "ancillary" operations; e.g., the building of a station by a railway company: see *Pearce v. London and South Western Ry. Co.*, [1900] 2 Q. B. 100.

The proviso to sub-sect. (1) re-enacts, with slight verbal alteration, sect. 1, sub-sect. (2) of the Workmen's Compensation Act, 1900.

Sub-sect. (2). See the Workmen's Compensation Rules, 1907, rr. 19—23, 25, 26, for procedure under this section.

Sub-sect. (4). "*On, in or about*," "Physical contiguity" is the test to be applied to what is in each case a question of fact. See the decisions on these words in sect. 7 of the Act of 1897: *Powell v. Brown*, [1899] 1 Q. B. 157; *Lowth v. Ibbotson*, [1899] 1 Q. B. 1003; *Fenn v. Miller*, [1900] 1 Q. B. 788. This sub-section was before the Court of Appeal in *Andrews v. Andrews and Mears* (1908), 24 Times L. R. 709.

5.—(1) *Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then, in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or if the employer is a company in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in the enactments relating to bankruptcy and the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so however that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.* Provision as to cases of bankruptcy of employer.

(2) *If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the bankruptcy or liquidation.*

(3) *There shall be included among the debts which under section one of the Preferential Payments in Bankruptcy Act, 1888, and section four of the Preferential Payments in Bankruptcy (Ireland) Act, 1889, are in the distribution of the property of a bankrupt and in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount, not exceeding in any individual case one hundred pounds, due in respect of any compensation the liability whereof accrued before the date of the receiving order or the date of the commencement of the winding up, and those Acts and the Preferential Payments in Bankruptcy Amendment Act, 1897, shall have effect accordingly. Where the compensation is a weekly payment, the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the First Schedule to this Act.* 51 & 52 Vict. c. 62.
52 & 53 Vict. c. 60.
60 & 61 Vict. c. 19.

50 & 51 Vict.
c. 43.

(4) *In the case of the winding up of a company within the meaning of the Stannaries Act, 1887, such an amount as aforesaid, if the compensation is payable to a miner or the dependants of a miner, shall have the like priority as is conferred on wages of miners by section nine of that Act, and that section shall have effect accordingly.*

(5) *The provisions of this section with respect to preferences and priorities shall not apply where the bankrupt or the company being wound up has entered into such a contract with insurers as aforesaid.*

(6) *This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.*

This section is now.

Sub-sect. (1). By virtue of r. 35 (1), (3), Workmen's Compensation Rules, 1907, a claim by the workman against the insurers is to be enforced, as if it were an application for compensation, in accordance with the provisions of and subject to the rules made under this Act. What is the meaning of the last words of this sub-section? Do they mean that all the employer's defences are open to the insurers, as well as any defence which could have been raised against the employer arising out of the contract of insurance? That would certainly appear to be the natural meaning of the words. For instance, may the insurers raise against the workman the defence that the contract of insurance was induced by the fraudulent misrepresentation of a material fact, which formed the basis of the contract? If not, they are certainly under a "greater liability to the workman than they would have been under to the employer." On the other hand, is the meaning simply that the amount of the insurers' pecuniary liability is to be limited to the amount of their pecuniary liability to the employer under the contract of insurance? "Liability" seems to be used in sub-section (2) in this sense. It is submitted that the former is the true meaning. See r. 35 (3), Workmen's Compensation Rules, 1907.

Sub-sect. (3). The provisions of the Preferential Payments in Bankruptcy Acts, 1888 and 1897, are set out at p. 127, in Part I. of this Book. The material portions of sect. 4 of the Irish Act of 1889 are practically the same as those of sect. 1 of the Act of 1888.

"*The amount of the lump sum,*" &c. See Sched. I. cl. (17).

Sub-sect. (4). By sect. 9 of the Stannaries Act, 1887, it is provided:—

"If at the commencement of the winding-up of any company, whether by the Court or otherwise, any wages not exceeding such an amount as under the fourth section would be made a first charge" (viz., three months' wages) "are unpaid, the same shall be paid by the official liquidator or liquidator forthwith in priority to all other costs, except such costs of and incidental to the making of the order for the winding-up as in the opinion of the Court shall have been properly incurred, and, subject to the tenth section of this Act, to all claims, whether by mortgagees, execution creditors or any other person whatsoever; and, subject as aforesaid, the Court may by order charge the whole or any part of the assets of the company, in absolute priority to all claims and to all existing mortgages or charges thereon, with the payment of a sum sufficient to discharge the said wages, with interest thereon at a rate not exceeding 5 per cent. per annum; and such charge may be made in favour of any person who is willing to advance the requisite amount, or any part thereof, and as soon as the said sum has been so advanced, the said wages shall be paid without delay, so far as such advanced amount extends, and in such order of payment as the Court directs."

To come within the Stannaries Act, 1887, the company must be one engaged in or formed for working metalliferous mines or tin-streaming works within the stannaries of Cornwall and Devon. The jurisdiction under this Act was, by virtue of the Stannaries Court (Abolition) Act, 1896, and the order thereunder dated December 16th, 1896, transferred to the County Courts of Cornwall. There is no limit to the jurisdiction: Companies (Winding-up) Act, 1890, s. 1, sub-s. (4); see also Ord. LI. of the County Court Rules, 1903.

Appeal. The appeal in proceedings under sub-sect. (1) will be to the Court of Appeal under Sched. II. cl. (4): see r. 35 (3) W. C. Rules, 1907. An appeal in a winding-up in the County Court under sub-sects. (3) and (4) will lie to a Divisional Court: see *Leech v. Life and Health Assurance Association*, [1901] 1 Q. B.

707; *Northern Employers', &c. v. Kiverton*, [1902] 1 K. B. 880; *Morris v. Northern Employers', &c.*, [1902] 2 K. B. 165; the principles of which decisions apply.

6. Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

Remedies
both against
employer and
stranger.

- (1) The workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for such compensation, but shall not be entitled to recover both damages and compensation; and
- (2) If the workman has recovered compensation under this Act, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under the section of this Act relating to sub-contracting, shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by action, or, by consent of the parties, by arbitration under this Act.

The words in italics are new.

Sub-sect. (1). Under the corresponding section in the Act of 1897 the workman had to choose against which to proceed.

Sub-sect. (2). "*If the workman has recovered compensation under this Act.*" These words would seem to make the obtaining of an award by a workman the condition of the employers' right to indemnification. Under the Act of 1897, the words were (sect. 6): "*If compensation be paid under this Act*, the employer shall be entitled to be indemnified by the said other person." And in *Thompson v. North Eastern Marine Engineering Works*, [1903] 1 K. B. 428, Kennedy, J., held that, having regard to these words, the payment of compensation under an agreement entitled the employer to be indemnified. It is true that "agreement" is still a mode of settlement under this Act (sect. 1, sub-sect. (3)); but, in view of the change in wording referred to, it would appear that the difficulty dealt with in that decision no longer exists.

The proceedings for indemnity are regulated by Rules 24, 25 and 26 of the Workmen's Compensation Rules, 1907.

7.—(1) *This Act shall apply to masters, seamen, and apprentices to the sea service and apprentices in the sea-fishing service, provided that such persons are workmen within the meaning of this Act, and are members of the crew of any ship registered in the United Kingdom, or of any other British ship or vessel of which the owner, or (if there is more than one owner) the managing owner, or manager resides or has his principal place of business in the United Kingdom, subject to the following modifications:—*

Application
of Act to
seamen.

- (a) *The notice of accident and the claim for compensation may, except where the person injured is the master, be served on the master of the ship as if he were the employer, but where the accident happened and the incapacity commenced on board the ship it shall not be necessary to give any notice of the accident:*
- (b) *In the case of the death of the master, seaman, or apprentice, the claim for compensation shall be made within six months after news of the death has been received by the claimant:*
- (c) *Where an injured master, seaman, or apprentice is discharged or left behind in a British possession or in a foreign country, depositions respecting the circumstances and nature of the injury may be taken by any judge or magistrate in the British possession, and by any British consular*

57 & 58 Vict.
c. 60.

officer in the foreign country, and if so taken shall be transmitted by the person by whom they are taken to the Board of Trade, and such depositions or certified copies thereof shall in any proceedings for enforcing the claim be admissible in evidence as provided by sections six hundred and ninety-one and six hundred and ninety-five of the Merchant Shipping Act, 1894, and those sections shall apply accordingly :

- (d) *In the case of the death of a master, seaman, or apprentice, leaving no dependants, no compensation shall be payable, if the owner of the ship is under the Merchant Shipping Act, 1894, liable to pay the expenses of burial :*
- (e) *The weekly payment shall not be payable in respect of the period during which the owner of the ship is, under the Merchant Shipping Act, 1894, as amended by any subsequent enactment, or otherwise, liable to defray the expenses of maintenance of the injured master, seaman, or apprentice :*
- (f) *Any sum payable by way of compensation by the owner of a ship under this Act shall be paid in full notwithstanding anything in section five hundred and three of the Merchant Shipping Act, 1894 (which relates to the limitation of a shipowner's liability in certain cases of loss of life, injury, or damage), but the limitation on the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity under the section of this Act relating to remedies both against employer and stranger as if the indemnity were damages for loss of life or personal injury :*
- (g) *Sub-sections (2) and (3) of section one hundred and seventy-four of the Merchant Shipping Act, 1894 (which relates to the recovery of wages of seamen lost with their ship), shall apply as respects proceedings for the recovery of compensation by dependants of masters, seamen, and apprentices lost with their ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices ; and proceedings for the recovery of compensation shall in such a case be maintainable if the claim is made within eighteen months of the date at which the ship is deemed to have been lost with all hands :*

(2) *This Act shall not apply to such members of the crew of a fishing vessel as are remunerated by shares in the profits of the gross earnings of the working of such vessel.*

(3) *This section shall extend to pilots to whom Part X. of the Merchant Shipping Act, 1894, applies, as if a pilot when employed on any such ship as aforesaid were a seaman and a member of the crew.*

This section is entirely new.

“Seamen” as such were not within the old Act.

See r. 36, Workmen's Compensation Rules, 1907, for procedure under this section.

Sub-sect. (1) (d) and (e). By sect. 207, sub-sect. (1) of the Merchant Shipping Act it is provided :—

“If the master of, or a seaman or apprentice belonging to, a ship receives any hurt or injury in the service of the ship . . . the expenses of the maintenance of the master, seaman, or apprentice until he is cured, or dies, or is brought back, if shipped in the United Kingdom, to a port of the United Kingdom, or if shipped in a British possession to a port of that possession, and of his conveyance to the port, and in case of death the expense (if any) of his burial, shall be defrayed by the owner of the ship, without any deduction on that account from his wages.”

Sub-sect. (1) (g). The two sub-sections referred to deal with the evidence upon

which the ship shall be deemed to have been lost with all hands, and with the proof of the seamen or apprentices in question having been on board at the time of the loss.

Sub-sect. (2). A partner, working in a mine, who was paid his wages out of the profits, was held not to be a "workman" within the old Act: *Ellis v. Joseph Ellis & Co.*, [1905] 1 K. B. 324.

Sub-sect. (3). The pilots referred to are—(1) "Qualified" pilots, *i.e.*, licensed by a "pilotage authority"; (2) "unqualified" pilots acting in certain circumstances within a pilotage district (sect. 596); (3) pilots licensed by the Trinity House to act within certain limits.

Sect. 11, *infra*, gives the right in certain circumstances, when compensation is claimed from the owners, to detain the ship.

8.—(1) *Where—*

- (i) *The certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district in which a workman is employed certifies that the workman is suffering from a disease mentioned in the Third Schedule to this Act and is thereby disabled from earning full wages at the work at which he was employed; or*
- (ii) *A workman is, in pursuance of any special rules or regulations made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of having contracted any such disease; or*
- (iii) *The death of a workman is caused by any such disease;*

Application
of Act to
industrial
diseases.

1 Edw. 7,
c. 22.

and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement or suspension, whether under one or more employers, he or his dependants shall be entitled to compensation under this Act as if the disease or such suspension as aforesaid were a personal injury by accident arising out of and in the course of that employment, subject to the following modifications:—

- (a) *The disablement or suspension shall be treated as the happening of the accident;*
- (b) *If it is proved that the workman has at the time of entering the employment wilfully and falsely represented himself in writing as not having previously suffered from the disease, compensation shall not be payable;*
- (c) *The compensation shall be recoverable from the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due;*

Provided that—

(i) *The workman or his dependants if so required shall furnish that employer with such information as to the names and addresses of all the other employers who employed him in the employment during the said twelve months as he or they may possess, and, if such information is not furnished, or is not sufficient to enable that employer to take proceedings under the next following proviso, that employer upon proving that the disease was not contracted whilst the workman was in his employment shall not be liable to pay compensation; and*

(ii) *If that employer alleges that the disease was in fact contracted whilst the workman was in the employment of some other employer, and not whilst in his employment, he may join such other employer as a party to the arbitration, and if the allegation is proved that other employer shall be the employer from whom the compensation is to be recoverable; and*

(iii) *If the disease is of such a nature as to be contracted by a gradual process, any other employers who during the said twelve months employed the workman in the employment to the nature of which the disease was due shall be liable to make to the employer from whom compensation is recoverable such contributions as, in default of agreement, may be determined in the arbitration under this Act for settling the amount of the compensation :*

- (d) *The amount of the compensation shall be calculated with reference to the earnings of the workman under the employer from whom the compensation is recoverable :*
- (e) *The employer to whom notice of the death, disablement, or suspension is to be given shall be the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due, and the notice may be given notwithstanding that the workman has voluntarily left his employment.*
- (f) *If an employer or a workman is aggrieved by the action of a certifying or other surgeon in giving or refusing to give a certificate of disablement or in suspending or refusing to suspend a workman for the purposes of this section, the matter shall in accordance with regulations made by the Secretary of State be referred to a medical referee, whose decision shall be final.*

(2) *If the workman at or immediately before the date of the disablement or suspension was employed in any process mentioned in the second column of the Third Schedule to this Act, and the disease contracted is the disease in the first column of that Schedule set opposite the description of the process, the disease, except where the certifying surgeon certifies that in his opinion the disease was not due to the nature of the employment, shall be deemed to have been due to the nature of that employment, unless the employer proves the contrary.*

(3) *The Secretary of State may make rules regulating the duties and fees of certifying and other surgeons (including dentists) under this section.*

(4) *For the purposes of this section the date of disablement shall be such date as the certifying surgeon certifies as the date on which the disablement commenced, or, if he is unable to certify such a date, the date on which the certificate is given : Provided that—*

- (a) *Where the medical referee allows an appeal against a refusal by a certifying surgeon to give a certificate of disablement, the date of disablement shall be such date as the medical referee may determine :*
- (b) *Where a workman dies without having obtained a certificate of disablement, or is at the time of death not in receipt of a weekly payment on account of disablement, it shall be the date of death.*

(5) *In such cases, and subject to such conditions as the Secretary of State may direct, a medical practitioner appointed by the Secretary of State for the purpose shall have the powers and duties of a certifying surgeon under this section, and this section shall be construed accordingly.*

(6) *The Secretary of State may make orders for extending the provisions of this section to other diseases and other processes, and to injuries due to the nature of any employment specified in the order not being injuries by accident, either without modification or subject to such modifications as may be contained in the order.*

(7) *Where, after inquiry held on the application of any employers or workmen engaged in any industry to which this section applies, it appears that a mutual trade insurance company or society for insuring against the risks under this section has been established for the industry, and that a majority of the employers engaged in that industry are insured against such risks in the company or society and that the company or society consents, the Secretary of State may, by Provisional Order, require all employers in that industry to insure in the company or society upon such terms and under such conditions and subject to such exceptions as may be set forth in the Order. Where such a company or society has been established, but is confined to employers in any particular locality or of any particular class, the Secretary of State may for the purposes of this provision treat the industry, as carried on by employers in that locality or of that class, as a separate industry.*

(8) *A Provisional Order made under this section shall be of no force whatever unless and until it is confirmed by Parliament, and if, while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against the Order, the Bill may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of Private Bills, and any Act confirming any Provisional Order under this section may be repealed, altered, or amended by a Provisional Order made and confirmed in like manner.*

(9) *Any expenses incurred by the Secretary of State in respect of any such Order, Provisional Order, or confirming Bill shall be defrayed out of moneys provided by Parliament.*

(10) *Nothing in this section shall affect the rights of a workman to recover compensation in respect of a disease to which this section does not apply, if the disease is a personal injury by accident within the meaning of this Act.*

This section is entirely new.

See the notes on "Defences to Claims," at p. 655, *supra*, as to the effect of this section upon the decisions regarding industrial diseases under the old Act.

Procedure in an arbitration under this section is regulated by r. 39, Workmen's Compensation Rules, 1907.

The regulations made as to the duties, remuneration and expenses of medical referees and certifying surgeons under sub-sects. (1) (f), (3) and (5), and sect. 10 (1) and the forms of their notices and certificates are printed at p. 810, *infra*. And see r. 82, Workmen's Compensation Rules, 1907.

Sub-sect. (1) (i). As to certifying surgeons under the Factory Act, 1901, which is printed at p. 461, *supra*, see sects. 122—124 (appointment and payment); sect. 73 (notification to them of certain diseases).

Sub-sect. (4), proviso (a). As to medical referees, see the notes on sect. 10, *infra*.

Sub-sect. (5). Apparently a certificate of disablement may be given either by the certifying surgeon under the Factory Act [sub-sect. (1) (i)] or by one appointed under this sub-section.

Sub-sect. (10). For an instance of such a case, see *Thompson v. Ashington Coal Co.* (1901), 17 T. L. R. 345: Death from blood-poisoning caused by the penetration of a piece of coal into a miner's knee.

Sub-sect. (6). By order dated May 22nd, 1907, the Secretary of State has extended the provisions of this section to the following diseases:—

Description of Disease or Injury.	Description of Process.
1. Poisoning by nitro- and amido-derivatives of benzene (dinitro-benzol, anilin, and others) or its sequelæ.	Any process involving the use of a nitro- or amido-derivative of benzene or its preparations or compounds.
2. Poisoning by carbon bisulphide or its sequelæ.	Any process involving the use of carbon bisulphide or its preparations or compounds.
3. Poisoning by nitrous fumes or its sequelæ.	Any process in which nitrous fumes are evolved.
4. Poisoning by nickel carbonyl or its sequelæ.	Any process in which nickel carbonyl gas is evolved.
5. Arsenic poisoning or its sequelæ ..	Handling of arsenic or its preparations or compounds.
6. Lead poisoning or its sequelæ	Handling of lead or its preparations or compounds.
7. Poisoning by <i>Gonima Kamassi</i> (African boxwood) or its sequelæ.	Any process in the manufacture of articles from <i>Gonima Kamassi</i> (African boxwood).
8. Chrome ulceration or its sequelæ ..	Any process involving the use of chromic acid or bi-chromate of ammonium, potassium, or sodium, or their preparations.
9. Eczematous ulceration of the skin produced by dust or caustic or corrosive liquids, or ulceration of the mucous membrane of the nose or mouth produced by dust.	
10. Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye due to pitch, tar, or tarry compounds.	Handling or use of pitch, tar, or tarry compounds.
11. Scrofula (chimney-sweep's cancer).	Chimney sweeping.
12. Nystagmus.....	Mining.
13. Glanders.....	Care of any equine animal suffering from glanders; handling the carcase of such animal.
14. Compressed air illness or its sequelæ	Any process carried on in compressed air.
15. Subcutaneous cellulitis of the hand (bent hand).	Mining.
16. Subcutaneous cellulitis over the patella (miner's bent knee).	Mining.
17. Acute bursitis over the elbow (miner's bent elbow).	Mining.
18. Inflammation of the synovial lining of the wrist joint and tendon sheaths.	Mining.

Application
to workmen
in employ-
ment of
Crown.

9.—(1) This Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to workmen employed by or under the Crown to whom this Act would apply if the employer were a private person :

Provided that in the case of a person employed in the private service of the Crown, the head of that department of the Royal Household in which he was employed at the time of the accident shall be deemed to be his employer.

(2) The Treasury may, by warrant laid before Parliament, modify for the purposes of this Act their warrant made under section one of the Superannuation Act, 1887, and notwithstanding anything in that Act, or any such warrant, may frame schemes with a view to their being certified by the Registrar of Friendly Societies under this Act. 50 & 51 Vict.
c. 67.

Sub-sect. (1). The proviso is new. See Workmen's Compensation Rules, 1907, r. 79.

Sub-sect. (2). The Superannuation Act, 1887 (50 & 51 Vict. c. 67), s. 1, provides that where a person employed in the civil service of the State is injured in the actual discharge of his duty, and without his own default, and by some injury specifically attributable to the nature of his duty, the Treasury may grant to him, or, if he dies from the injury, to his widow, his mother, if wholly dependent on him at the time of his death, and to his children, or to any of them, such gratuity or annual allowance as the Treasury may consider reasonable, and as may be permitted by the terms of a warrant under this section. The gratuity is not to exceed one year's salary of the person injured; and the allowance, together with any superannuation allowance to which he is otherwise entitled, is not to exceed the salary of the person injured, or 300*l.* a year, whichever is less.

10.—(1) The Secretary of State may appoint such legally qualified medical practitioners to be medical referees for the purposes of this Act as he may, with the sanction of the Treasury, determine, and the remuneration of, and other expenses incurred by, medical referees under this Act shall, subject to regulations made by the Treasury, be paid out of moneys provided by Parliament. Appointment and remuneration of medical referees and arbitrators.

Where a medical referee has been employed as a medical practitioner in connection with any case by or on behalf of an employer or workman or by any insurers interested, he shall not act as medical referee in that case.

(2) The remuneration of an arbitrator appointed by a judge of county courts under the Second Schedule to this Act (*v*) shall be paid out of moneys provided by Parliament in accordance with regulations made by the Treasury.

The words in italics are new.

Sub-sect. (1) reproduces, in part, para. (13) of Sched. II. of the old Act. The Treasury regulations are printed at p. 810, *infra*.

The duties of medical referees are—

- (1) To report on questions submitted to them (para. (15), Sched. II.).
 - (2) To sit, when summoned as assessors with a county court judge (para. (5), Sched. II.).
 - (3) To decide appeals from the refusal of certifying surgeons to grant certificates of disablement (sect. 8, sub-sects. (1) (f) and (4) (a)).
 - (4) To give certificates upon questions referred to them under para. (15) of Sched. I.
 - (5) To certify as to the character of the disablement under Sched. I. para. (18).
- (2), (3), (4) and (5) are new. See the notes at the places referred to as to procedure, remuneration, &c.

"Where a medical referee." &c. *E.g.*, under paras. (4) and (14) of Sched. I.

Sub-sect. (2) reproduces, in part, para. (3) of Sched. II. of the old Act.

11.—(1) *If it is alleged that the owners of any ship are liable as such owners to pay compensation under this Act, and at any time that ship is found in any port or river of England or Ireland, or within three miles of the coast thereof, a judge of any court of record in England or Ireland may, upon its being shown to him by any person applying in accordance with the rules of the court that the owners are probably liable as such to pay such compensation, and that none of the owners reside in the United Kingdom, issue an order directed to any officer of Customs or other officer named by the judge requiring him to detain the ship* Detention of ships.

(*v*) Para. (3).

until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation and to pay such compensation and costs as may be awarded thereon: and any officer of Customs or other officer to whom the order is directed shall detain the ship accordingly.

(2) *In any legal proceeding to recover such compensation, the person giving security shall be made defendant, and the production of the order of the judge, made in relation to the security, shall be conclusive evidence of the liability of the defendant to the proceeding.*

57 & 58 Viet
e. 60.

(3) *Section six hundred and ninety-two of the Merchant Shipping Act, 1894, shall apply to the detention of a ship under this Act as it applies to the detention of a ship under that Act, and, if the owner of a ship is a corporation, it shall for the purposes of this section be deemed to reside in the United Kingdom if it has an office in the United Kingdom at which service of writs can be effected.*

This section is new.

For procedure under this section, see r. 37, Workmen's Compensation Rules, 1907. As to the Court in which the application for detention is to be made, and proceedings by way of arbitration taken under this section, see Workmen's Compensation Rules, 1907, r. 73 (2), (3).

Subject to the difference between an action for damages on the ground of negligence and a claim for compensation, this section reproduces sect. 1, sub-sects. (1), (2), and (3) of the Shipowners' Negligence (Remedies) Act, 1905 (x); and by r. 37 (1), Workmen's Compensation Rules, 1907, an application for detention under this section is to be made in accordance with the rules under the last-named Act. No such rules have been made.

R. 38, Workmen's Compensation Rules, 1907, deals with the application of an employer under the Shipowners' Negligence (Remedies) Act, 1905 (x), for the detention of a ship with a view to claiming indemnity under sect. 6 of the Workmen's Compensation Act, 1906. Such an application may be made by virtue of sect. 1, sub-sect. (4), of the Shipowners, &c. Act, 1905, which provides:—

“(4) The words ‘person applying’ in this section shall include an employer who has paid compensation, or against whom a claim for compensation has been made, under the Workmen's Compensation Act, 1897, as amended by any subsequent enactment, if he shows the judge that he probably is or will become entitled to be indemnified under that Act, and in such case this section shall apply as if the employer were a person claiming damages for personal injuries.”

Sub-sect. (3). By sect. 692 of the Merchant Shipping Act, 1891, it is provided:—

“(1) Where under this Act a ship is to be or may be detained, any commissioned officer in full pay in the naval or military service of His Majesty, or any officer of the Board of Trade, or any officer of Customs, or any British Consular officer, may detain the ship, and if the ship after detention or after the service on the master of any notice of order for detention proceeds to sea before it is released by competent authority, the master of the ship, and also the owner, and any person who sends the ship to sea, if that owner or person is party or privy to the offence, shall be liable for each offence to a fine not exceeding one hundred pounds.

“(2) Where a ship so proceeding to sea takes to sea when on board thereof in the execution of his duty any officer authorized to detain the ship, or any surveyor or officer of the Board of Trade or any officer of Customs, the owner and master of the ship shall each be liable to pay all expenses of and incidental to the officer or surveyor being so taken to sea, and also to a fine not exceeding one hundred pounds, or, if the offence is not prosecuted in a summary manner, not exceeding ten pounds for every day until the officer or surveyor returns, or until such time as would enable him after leaving the ship to return to the port from which he is taken, and the expenses ordered to be paid may be recovered in like manner as the fine.

(x) Printed at p. 857, *infra*.

“(3) Where under this Act a ship is to be detained an officer of Customs shall, and where under this Act a ship may be detained an officer of Customs may, refuse to clear that ship outwards or to grant a transire to that ship.

“(4) Where any provision of this Act provides that a ship may be detained until any document is produced to the proper officer of Customs, the proper officer shall mean, unless the context otherwise requires, the officer able to grant a clearance or transire to such ship.”

“*An office . . . at which service of writs can be effected.*” See Ord. IX. r. 8, R. S. C., and the notes thereon in the Annual Practice.

12.—(1) *Every employer in any industry to which the Secretary of State may direct that this section shall apply shall, on or before such day in every year as the Secretary of State may direct, send to the Secretary of State a correct return specifying the number of injuries in respect of which compensation has been paid by him under this Act during the previous year, and the amount of such compensation, together with such other particulars as to the compensation as the Secretary of State may direct, and in default of complying with this section shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding five pounds.*

Returns as to compensation.

(2) *Any regulations made by the Secretary of State containing such directions as aforesaid shall be laid before both Houses of Parliament as soon as may be after they are made.*

This section is new.

The Secretary of State has made regulations (St. R. & O. 1908, No. 17) under this section. They are printed at p. 847, *infra*.

13. In this Act, unless the context otherwise requires,—

Definitions.

“Employer” includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer, *and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for that other person.*

The words in italics are new.

See the notes on “Persons to whom the Act applies,” at p. 648, *supra*.

In cases of injury done to third persons by the negligence of servants lent or hired out, he is liable at common law who had the *control* of the operation by the negligent performance of which the injury has been caused: see *Donovan v. Laving*, &c., [1893] 1 Q. B. 529; *Jones v. Scullard*, [1898] 2 Q. B. 565, and the discussion of this question at pp. 19, and 22, *supra*. This definition fixes liability under this Act upon the lender or letter out of the servant. Under the Act of 1897, in the case of a mere contract for the supply of labour or materials, the contractor was not liable, as not being an “undertaker”: see the remarks of Cozens-Hardy, L. J., in *McCabe v. Jopling*, &c., [1904] 1 K. B. 222, 231. Nor was the hirer or borrower of the servant liable, there being no “agreement” between him and the employee, so as to constitute the latter his “workman.” Under this section the contractor is made liable, with a right over to indemnity under sect. 6, *supra*, when that section applies.

“Workman” *does not include any person employed otherwise than by way of manual labour whose remuneration exceeds two hundred and fifty pounds a year, or a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade*

or business, or a member of a police force, or an out worker, or a member of the employer's family dwelling in his house, but, save as aforesaid, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing;

Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants or other person to whom *or for whose benefit* compensation is payable;

The words in italics are new.

See the notes on "Persons to whom the Act applies," at p. 648, *supra*.

"Dependants" means such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, *or would but for the incapacity due to the accident have been so dependent, and where the workman, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, shall include such an illegitimate child and parent or grandparent respectively;*

"Member of a family" means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother, half-sister.

The words in italics are new.

There is no distinction between England and Ireland, and Scotland, as in the Act of 1897.

The inclusion of illegitimate relationships, as in that of brother, sister, half-brother and half-sister, is new.

"Dependency" and its degree is a question of fact in each case: *Main Colliery Co. v. Davies*, [1900] A. C. 358; *Rees v. Penrhyber Navigation Colliery Co.*, [1903] 1 K. B. 259. The actual income and actual expenditure for purposes of maintenance are the decisive points; there is no abstract standard founded upon "the necessities of life having regard to the class and position in life of the applicant" (*Main Colliery Co. v. Davies*, *ubi sup.*); or upon "the standard of living in the neighbourhood": *French v. Underwood* (1903), 19 Times L. R. 416. The position of the dependant just before the death is what is looked at; and money coming to the dependant from another source after the death cannot be taken into account: *Pryce v. Penrhyber Navigation Colliery Co.*, [1902] 1 K. B. 221.

A boy, living at home with his parents, gave them all his wages. They supplied him with food, lodging and clothes, and occasionally pocket-money. Two out of five other children did the same. *Held*, that there was evidence of the father's dependency: *Main Colliery Co. v. Davies*, *ubi sup.* A husband, being out of work, left his wife four months before his death; and from that date paid nothing towards his wife's maintenance. He was earning wages at the time of his death. The wife had no means of subsistence of her own, and was supported in fact by relations' charity and a little work she did herself. *Held*, that there was evidence which justified the finding that she was totally dependent on her husband: *Coulthard v. Consell Iron Co., Ltd.*, [1905] 2 K. B. 869. There is a legal presumption of dependency in the case of a wife which has to be rebutted in order to deprive her of compensation: *Williams v. Ocean Coal Co., Ltd.*, [1907] 2 K. B. 422; *Stanland v. North Eastern Steel Co., Ltd.*, *ibid.* p. 425, n. A posthumous child is a dependant: *Williams v. Ocean Coal Co.*, *ubi sup.* A widow and children of a deceased workman are none the less "dependants wholly dependent upon his earnings" (Sched. I. para. (1) (i)), because the workman has been enabled, by the receipt of money

from his wage-earning sons or from other sources, to augment the fund out of which he has maintained his household. If, however, a workman's wife has, at the time of his death, independent means of support of any kind, which are not derived through him, and which he could not have appropriated without her consent, such as private income or earnings of her own, the case is one of partial dependence on her husband's earnings: *Senior v. Fontaines & Burnley* 1907, 23 Times L. R. 634. A father, who is a pauper inmate of a workhouse, to whose maintenance his son contributed nothing, is not, as a matter of law, dependent upon his son's earnings: *Rees v. Penrhydyffer Navigation Colliery Co.*, [1903] 1 K. B. 259.

The right of dependants to compensation is a separate right, of which the workman cannot deprive them, subject to this, that the employer is not bound to pay in the aggregate more than the maximum compensation allowed by the Act, and is entitled to take credit for the sums advanced to the workman by way of weekly payment: *Williams v. Fauchall Colliery Co.*, [1907] 2 K. B. 433.

In cases of compensation by agreement, dependants are protected by Sched. II. para. (9) (d) (e) and para. (10).

"Ship," "vessel," "seaman," and "port" have the same meanings as in the Merchant Shipping Act, 1891.

This is new.

By sect. 742 of the Merchant Shipping Act, 1894:—

"Ship" includes every description of vessel used in navigation not propelled by oars.

"Vessel" includes any ship or boat, or any other description of vessel used in navigation.

"Seaman" includes every person (except masters, pilots and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship.

"Port" includes place.

"Manager," in relation to a ship, means the ship's husband or other person to whom the management of the ship is entrusted by or on behalf of the owner.

This is new.

"Police force" means a police force to which the Police Act, 1890, or the Police (Scotland) Act, 1890, applies, the City of London Police Force, the Royal Irish Constabulary, and the Dublin Metropolitan Police Force. 53 & 54 Vict. c. 45. 53 & 54 Vict. c. 67.

This is new.

By sect. 33 of the Police Act, 1890, "Police force" means a force maintained by one of the police authorities mentioned in the third schedule to that Act. That schedule includes the Metropolitan Police Force, the River Tyne police, county police forces maintained by their standing joint committees, borough police forces maintained by Watch Committees, police forces of towns not being boroughs managed under local Acts.

The Police (Scotland) Act, 1890, applies to county police forces maintained by their standing joint committees, and burgh police forces maintained by the police commissioners or the town council acting as police commissioners. (Sect. 30 and Sched. III.)

"Outworker" means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale, in his own home or on other premises not under the control or management of the person who gave out the materials or articles.

This is new.

The term "outworker" is taken from the Factory Act, 1901. See the marginal note to sect. 107.

The exercise and performance of the powers and duties of a local or other public authority shall, for the purposes of this Act, be treated as the trade or business of the authority.

This is new.

"Trade or business." See the definition of "workman," *supra*.

"County court," "judge of the county court," "registrar of the county court," "plaintiff," and "rules of court," as respects Scotland, mean respectively sheriff court, sheriff, sheriff clerk, pursuer, and act of sederunt.

This reproduces para. (14) (a) of Sched. II. of the Act of 1897.

Special provisions as to Scotland.

43 & 44 Vict. c. 42.

14. *In Scotland, where a workman raises an action against his employer independently of this Act in respect of any injury caused by accident arising out of and in the course of the employment, the action, if raised in the sheriff court and concluding for damages under the Employers' Liability Act, 1880, or alternatively at common law or under the Employers' Liability Act, 1880, shall, notwithstanding anything contained in that Act, not be removed under that Act or otherwise to the Court of Session, nor shall it be appealed to that Court otherwise than by appeal on a question of law; and for the purposes of such appeal the provisions of the Second Schedule to this Act in regard to an appeal from the decision of the sheriff on any question of law determined by him as arbitrator under this Act shall apply.*

This is new.

See the notes on sect. 6 of the Employers' Liability Act, 1880, at p. 639, *supra*, and on para. (17) (b) of Sched. II. of this Act, *infra*.

Provisions as to existing contracts and schemes.

60 & 61 Vict. c. 37.

15.—(1) Any contract (*other than a contract substituting the provisions of a scheme certified under the Workmen's Compensation Act, 1897, for the provisions of that Act*) existing at the commencement of this Act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this Act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this Act.

(2) *Every scheme under the Workmen's Compensation Act, 1897, in force at the commencement of this Act shall, if re-certified by the Registrar of Friendly Societies, have effect as if it were a scheme under this Act.*

(3) *The Registrar shall re-certify any such scheme if it is proved to his satisfaction that the scheme conforms, or has been so modified as to conform, with the provisions of this Act as to schemes.*

(4) *If any such scheme has not been so re-certified before the expiration of six months from the commencement of this Act, the certificate thereof shall be revoked.*

The words in italics are new.

Sub-sect. (3). See sect. 3, *supra*, and the notes there.

16.—(1) This Act shall come into operation on the first day of July nineteen hundred and seven, but, except so far as it relates to references to medical referees, and proceedings consequential thereon, shall not apply in any case where the accident happened before the commencement of this Act. Commence-
ment and
repeal.

(2) The Workmen's Compensation Acts, 1897 and 1900, are hereby repealed, but shall continue to apply to cases where the accident happened before the commencement of this Act, except to the extent to which this Act applies to those cases. 60 & 61 Vict.
c. 37.
63 & 64 Vict.
c. 22.

Sub-sect. (1). "*References to medical referees*": see Sched. I. para. (15), and the notes there.

17. This Act may be cited as the Workmen's Compensation Act, 1906. Short title.

SCHEDULES.

FIRST SCHEDULE.

SCALE AND CONDITIONS OF COMPENSATION.

(1) The amount of compensation under this Act shall be:—

(a) Where death results (*a*) from the injury:—

(i) If the workman leaves any dependants wholly dependent upon his earnings (*b*) a sum equal to his earnings in the employment of the same employer (*c*) during the three years next preceding the injury, or the sum of one hundred and fifty pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds, provided that the amount of any weekly payments made under this Act, *and any lump sum paid in redemption thereof*, shall be deducted from such sum, and, if the period of the workman's employment by the said employer (*c*) has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings (*d*) during the period of his actual employment under the said employer (*c*);

(*a*) Death need not be the natural or probable consequence: *Dunham v. Clare*, [1902] 2 K. B. 292.

(*b*) See para. (2) (*b*) and (*d*) of this schedule and the notes thereon. The words "at the time of his death" have been omitted here: see in the definition of "dependants" the new words, "or

would but for the incapacity due to the accident have been so dependent" (sect. 13).

(*c*) See para. (2) (*c*) of this schedule and the notes thereon.

(*d*) See para. (2) (*a*) and (*b*) of this schedule and the notes thereon.

(ii) If the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings (*b*), such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration under this Act, to be reasonable and proportionate to the injury (*c*) to the said dependants; and

(iii) If he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding ten pounds (*f*);

- (b) Where total or partial incapacity for work results from the injury, a weekly payment (*g*) during the incapacity not exceeding fifty per cent. of his average weekly earnings (*d*) during the previous twelve months, if he has been so long employed, but if not then for any less period during which he has been in the employment of the same employer (*e*) such weekly payment not to exceed one pound :

Provided that—

- (a) *If the incapacity lasts less than two weeks no compensation shall be payable in respect of the first week ; and*
- (b) *As respects the weekly payments during total incapacity of a workman who is under twenty-one years of age at the date of the injury, and whose average weekly earnings are less than twenty shillings, one hundred per cent. shall be substituted for fifty per cent. of his average weekly earnings, but the weekly payment shall in no case exceed ten shillings.*

The words in italics are new.

See for definition of “dependants,” sect. 13, *supra*, and the notes there.

A dependant made a claim and died before any award was made. *Held*, that the right to compensation survived and passed to the dependant’s legal personal representative : *Darlington v. Roscoe*, [1907] 1 K. B. 219.

“Average weekly earnings.” See para. (2). The method of calculation is elaborately discussed in *Perry v. Wright*, [1908] 1 K. B. 441.

Where the employment is of such nature that the habitual giving and receiving of “tips” is open and notorious and sanctioned by the employer, those “tips” must be brought into account in estimating the “average weekly earnings” : *Penn v. Spiers & Pond, Ltd.*, [1908] 1 K. B. 766.

(2) *For the purposes of the provisions of this schedule relating to “earnings” and “average weekly earnings” of a workman, the following rules shall be observed :—*

- (a) *Average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being*

(b) See note (*b*), *ante*.

(c) See note (*c*), *ante*.

(d) See note (*d*), *ante*.

(e) In *Osmond v. Campbell & Harrison, Ltd.*, [1905] 2 K. B. 852, it was argued, on the strength of these words, that the county court judge had applied the wrong principle in that he had not deducted from the compensation awarded the cost of the maintenance of the deceased workman ; but the Court of Appeal would not disturb the award. It was held in *Bean v. Crawshaw*, [1902]

1 K. B. 25, that, having regard to subsect. (1) (a) (iii), an award under subsect. (1) (a) (ii) might include a sum for funeral expenses.

(f) As to the procedure in such a case, see Workmen’s Compensation Rules, 1907, r. 6.

(g) As to rules to be observed in fixing this payment, see para. (3) of this schedule. A workman is not entitled to his wages as well as to compensation during his period of disablement : *Elliott v. Liggins*, [1902] 2 K. B. 84.

remunerated (gg). Provided that where by reason of the shortness of the time during which the workman has been in the employment of his employer, or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district ;

- (b) Where the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident ;
- (c) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause ;
- (d) Where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings.

This paragraph is new.

Sub-sect. (a). The first sentence enacts the principle laid down by the House of Lords in *Lysons v. Andrew Knowles & Sons, Ltd.*, [1901] A. C. 79. It was there held that the general enactment in sect. 1 was in no way cut down by the schedule ; that there is no minimum period of employment necessary under the Act ; that the word "average" is loosely used, and simply means "that if a man was only employed at irregular intervals or at irregular amounts, you were to get at what the average was by putting them together and striking an average, so as to afford a test of the weekly sum to be paid" : per Lord Halsbury, *ibid.*, at p. 87. In the case referred to, the applicant worked on Tuesday and Thursday in the same calendar week, being paid 6s. for each day as a piece-worker. He was injured on the Thursday. The colliery week began on Wednesday and ended on Tuesday night. The House of Lords restored the order of the county court judge, reducing the weekly payment from 6s. to 3s. In *Stuart v. Nixon & Bruce*, [1901] A. C. 79, a case of death by accident after five days' work at daily wages, the same principle was applied. What then is the principle of calculation ? It would seem to be this : Where there is a contract of employment at a fixed sum per week and there has been employment for two weeks or more, the "average weekly earnings" must be the contract amount : see per Lord Halsbury in *Lysons v. Knowles, ubi sup.*, at p. 87. Where there has been substantially continuous employment (see sub-sect. (c) and notes there) at irregular times and varying wages for a year, the wages earned are to be added together and divided by 52 : *Keast v. Barrow Hematite, &c.* (1899), 15 Times L. R. 141 ; or in case of any less period by the number of weeks of such substantially continuous employment : *Hewlett v. Hepburn* (1899), 16 Times L. R. 56. If there has been employment for less than two weeks, whether under a weekly contract or as a casual labourer by the day or hour, and where therefore there is no material for striking an "average," strictly speaking, the question is : What sum, taking all the facts together, represents the earnings per week lost to the workman ? Or, put otherwise : What, in view of the facts before the Court, would the workman have earned had he completed two or more weeks' work ? See *per* Collins,

(gg) A seaman received a weekly sum in cash and his board and lodging on the ship : *Held*, that having regard to the circumstances under which an ordinary seaman is necessarily engaged and paid, there is no other practicable test for

computing the value to him of the board and lodging provided by the employer, than (in the absence of special circumstances) the actual cost of these allowances to the shipowner : *Rosenquist v. Bowring & Co., Ltd.*, [1908] 2 K. B. 108.

M. R., in *Ayres v. Buckeridge*, [1902] 1 K. B. 57, 65, 66. That sum, whatever it be, will be the "average weekly earnings." The question largely depends upon whether there be a presumption of continued employment. In *Ayres v. Buckeridge*, *ubi sup.*, the workman had been promised employment for sixty hours a week at $7\frac{1}{2}d.$ per hour, subject to dismissal at an hour's notice. He worked four days on this basis, and was killed on the fourth day. His earnings in a week of sixty hours at $7\frac{1}{2}d.$ an hour would have been £1 17s. 6d. The judge awarded the dependants that sum multiplied by 156. The Court of Appeal upheld him. In *Wheale v. Rhymney Iron Co.*, [1902] 1 K. B. 57, a haulier worked for eight days at 5s. 2d. a day, when he was injured. He was awarded a weekly payment of 15s. 6d., being half the amount earned in one week of six days at 5s. 2d. a day. The employers appealed and contended that, the workman having worked in two weeks, the whole amount he earned should have been divided by two, so as to arrive at his "average weekly earnings." The appeal was dismissed. In *Lysons v. Knowles*, *ubi sup.*, as Collins, M. R., points out in *Ayres v. Buckeridge* (l. c. p. 67), "the amount earned was divided by two because each day was in fact separated from the other by the custom of the colliery, so as to be in a different week, and there was no presumption of more than a day's labour in any week." See *Walters v. Clorer, Clayton & Co.* (1902), 18 Times L. R. 60. The proviso in sub-sect. (a) gets rid of the decision in *Bartlett v. Tutton & Sons*, [1902] 1 K. B. 72. In that case a dock-labourer was employed at Bristol for the day at 6d. an hour, subject to dismissal at an hour's notice. There was no presumption of continued employment. After working long enough on his first day of employment to have earned 3s. 3d., he was incapacitated by an accident. The judge refused to make an "illusory" award of 1s. 8d. a week, and awarded 9s. a week, being half of 18s., which he found was the average weekly earnings of a casual dock labourer in the port of Bristol. The Court of Appeal allowed the appeal on the ground that the amount had not been calculated with reference to the period during which the applicant had been "in the employment of the same employer." The meaning of this sub-section was considered in *Perry v. Wright*, [1908] 1 K. B. 441.

Sub-sect. (b). The contracts must be "*concurrent*," i.e., running together. If, therefore, a man worked for A. on Monday and Wednesday, and for B. on Tuesday and Thursday, in each case under a contract made for the day on the morning of each day, the earnings with B., it is submitted, could not be considered in a claim against A., nor *vice versa*. If, however, the contract with A. were to work on Monday and Wednesday, and with B. to work on Tuesday and Thursday, and the man were injured on Tuesday, this sub-section would apply. But suppose the man were injured on Thursday, when the contract with A. was at an end? It is submitted that in such a case, for the purposes of this sub-section, the contracts are "*concurrent*."

Sub-sect. (c). The effect of the first part of this sub-section is to overrule the decision in *Price v. J. Marsden & Sons*, [1899] 1 Q. B. 493. In that case the workman had worked forty-nine weeks at 9s. 6d. a week and three weeks at 13s. 8d. a week. The county court judge added the whole of the year's wages together and divided them by 52, and the Court of Appeal upheld that method of computation. Under this Act, the "average weekly earnings" would have been 13s. 8d. This principle may operate adversely to the workman. Cf. sect. 3 of the Employers' Liability Act, 1880. As to the meaning of this sub-section, see *Perry v. Wright*, [1908] 1 K. B. 441.

The last sentence of this sub-section is an adoption of the principle laid down in the decision under the old Act, viz., that the employment must be "substantially continuous": *Jones v. Ocean Coal Co.*, [1899] 2 Q. B. 124. This is a question of fact: *Giles v. Belford Smith & Co.*, [1903] 1 K. B. 843. Such breaks as holidays do not matter; "the real question is whether there has been any break in the relation of master and servant": *per* Vaughan Williams, L. J., in *Jones v. Ocean Coal Co.*, l. c. at p. 129; see *Kraus v. Barrow Hematite Steel Co.* (1899), 15 Times L. R. 141. There need not be work every day of the week: *Hathaway v. Argus Printing Co.*, [1901] 1 K. B. 96. In *Appleby v. Horsley*, [1899] 2 Q. B. 521, the workman left work owing to an accident, and returned to work with the same masters after eleven months, at a different wage, and continued working for them for seven months, when he was killed. *Held*, that there was a break in the employment, and that the last period alone was to be considered. In *Hewlett v. Hepburn & Co.* (1899), 16 Times L. R. 56, the applicant had worked for the respondents from August 1897, to February, 1899, with absences owing to illness from February 17th to May 12th, 1898, and from August 18th to September 3rd, 1898. No notice to terminate the contract was given, the man's tools were left at the respondents' works, and he resumed work without formal re-engagement. The Court of Appeal upheld the county court judge in disregarding any period save that between September, 1898, and February, 1899.

Sub-sect. (d). This sub-section overrules the decision of the House of Lords in *Midland Rail. Co. v. Sharpe*, [1901] A. C. 349, where it was held that a fixed sum paid in addition to his wages to a railway guard whenever his duties required him to lodge away from home formed part of his "earnings." A colliery company deducted 6d. from wages every week for lamp-oil supplied to the men; this deduction was disregarded in computing "earnings" (*Houghton v. Sutton Heath and Lea Green Collieries Co.*, [1901] 1 Q. B. 93); as, in *Abram Coal Co., Ltd. v. Southern*, [1903] A. C. 306, were deductions for cleaning lamps, oil, sharpening picks, and checking weights. The value of the use of a uniform provided by the employers to a servant for the purposes of the employment is to be taken into consideration in estimating his "earnings": *Great Northern Rail. Co. v. Dawson*, [1905] 1 K. B. 331. These decisions are unaffected by this sub-section.

(3) In fixing the amount of the weekly payment, regard shall be had to any payment, *allowance*, or *benefit* which the workman may receive from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper.

This corresponds to para. (2) in the old Act.

The words in italics are new.

See para. (1) (b), *supra*, and the notes thereon. The effect of that paragraph and this, taken together, is to impose two maximums upon the average weekly payment, and in some cases to cut down, by virtue of one provision, the maximum imposed by the other. Suppose the "average weekly earnings" to be 30s., and 20s. to be the average earnings after the accident, the average weekly payment cannot be more than 10s.; or, on the other hand, suppose the average weekly earnings before the accident to be 30s., and 10s. after the accident, the payment may not exceed 15s. This paragraph settles the difficulty raised in *Illingworth v. Walmsley*, [1900] 2 Q. B. 142, though that would have been a good decision under this Act. The county court judge may not lay down a general rule, but must exercise his discretion in each case: *Webster v. Sharp & Co., Ltd.*, [1905] A. C. 284. *Semble*, that the value of an apprentice's tuition cannot be taken into account: *Pomphrey v. Southwark Press*, [1901] 1 K. B. 86. Money earned otherwise than in the employment of a master, *e.g.*, money made in an independent business, is to be taken into account: *Norman & Burt v. Walder*, [1904] 2 K. B. 27.

(4) Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and, if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceeding under this Act in relation to compensation, shall be suspended until such examination has taken place.

See para. (15), *infra*.

Para. (14) provides for examination after the award.

See r. 55, Workmen's Compensation Rules, 1907, as to application for a suspension. No compensation is payable in respect of the period of suspension: Sched. I. para. (20).

A county court judge has not the power to make it a condition of his order that the employer pay the expenses of the attendance of the workman's doctor at the examination: *Osborn v. Vickers, Sons & Maxim, Ltd.*, [1900] 2 Q. B. 91. This paragraph applies where a workman has not given notice of the accident: *Ibid*.

(5) The payment in the case of death shall, unless otherwise ordered as herein-

after provided, be paid into the county court, and any sum so paid into court shall, subject to rules of court and the provisions of this schedule, be invested, applied, or otherwise dealt with by the court in such manner as the court in its discretion thinks fit for the benefit of the persons entitled thereto under this Act, and the receipt of the registrar of the court shall be a sufficient discharge in respect of the amount paid in :

Provided that, if so agreed, the payment in case of death shall, if the workman leaves no dependants, be made to his legal personal representative, or, if he has no such representative, to the person to whom the expenses of medical attendance and burial are due.

This is new. Cf. paras. (4) and (6) of Sched. I. of the Act of 1897; and see *Daniel v. Ocean Coal Co.*, [1900] 2 Q. B. 250.

See paras. (6), (8), (9)—(13); and see r. 56A of Workmen's Compensation Rules, 1907.

Para. (6) of Sched. I. of the Act of 1897 gave a committee power to order the investment, &c. of a sum awarded to a dependant. See Sched. II. para. (16), and the notes there, as to the powers of a committee under that paragraph.

The payee under an agreement or award must give a receipt: Sched. II. para. (14). See r. 4, Workmen's Compensation Rules, 1907, as to claims by dependants.

(6) *Rules of court may provide for the transfer of money paid into court under this Act from one court to another, whether or not the court from which it is to be transferred is in the same part of the United Kingdom as the court to which it is to be transferred.*

This is new.

See r. 76, Workmen's Compensation Rules, 1907.

(7) *Where a weekly payment is payable under this Act to a person under any legal disability, a county court may, on application being made in accordance with rules of court, order that the weekly payment be paid during the disability into court, and the provisions of this schedule with respect to sums required by this schedule to be paid into court shall apply to sums paid into court in pursuance of any such order.*

This is new.

See r. 57, Workmen's Compensation Rules, 1907.

(8) Any question as to who is a dependant shall, in default of agreement, be settled by arbitration under this Act, or, if not so settled before payment into court under this schedule, shall be settled by the county court, and the amount payable to each dependant shall be settled by arbitration under this Act, or, if not so settled before payment into court under this schedule, by the county court. Where there are both total and partial dependants nothing in this schedule shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependants.

The words in italics are new.

See r. 5, Workmen's Compensation Rules, 1907, as amended by Workmen's Compensation Rules, 1908.

(9) *Where, on application being made in accordance with rules of court, it appears to a county court that, on account of neglect of children on the part of a*

widow, or on account of the variation of the circumstances of the various dependants, or for any other sufficient cause, an order of the court or an award as to the apportionment amongst the several dependants of any sum paid as compensation, or as to the manner in which any sum payable to any such dependant is to be invested, applied, or otherwise dealt with, ought to be varied, the court may make such order for the variation of the former order or the award, as in the circumstances of the case the court may think just.

This is new.

See r. 58, Workmen's Compensation Rules, 1907.

(10) Any sum which under this schedule is ordered to be invested may be invested in whole or in part in the Post Office Savings Bank by the registrar of the county court in his name as registrar.

(11) Any sum to be so invested may be invested in the purchase of an annuity from the National Debt Commissioners through the Post Office Savings Bank, or be accepted by the Postmaster-General as a deposit in the name of the registrar as such, and the provisions of any statute or regulations respecting the limits of deposits in savings banks, and the declaration to be made by a depositor, shall not apply to such sums.

(12) No part of any money invested in the name of the registrar of any county court in the Post Office Savings Bank under this Act shall be paid out, except upon authority addressed to the Postmaster-General by the Treasury or, *subject to regulations of the Treasury*, by the judge or registrar of the county court.

(13) Any person deriving any benefit from any moneys invested in a post office savings bank under the provisions of this Act may, nevertheless, open an account in a post office savings bank or in any other savings bank in his own name without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

(14) Any workman receiving weekly payments under this Act shall, if so required by the employer, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

See para. (15) of this Schedule and the notes thereon.

See r. 55, Workmen's Compensation Rules, 1907, as to application of suspension of payments. And see Sched. I para. (20).

The corresponding paragraph (11) in the Act of 1897 gave the right to require medical examination to "any person by whom the employer is entitled under this Act to be indemnified," as well as to the employer.

(15) *A workman shall not be required to submit himself for examination by a medical practitioner under paragraph (4) or paragraph (14) of this schedule otherwise than in accordance with regulations made by the Secretary of State, or at more frequent intervals than may be prescribed by those regulations.*

Where a workman has so submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself,

and the employer or the workman, as the case may be, has within six days after such examination furnished the other with a copy of the report of that practitioner as to the workman's condition, then, in the event of no agreement being come to between the employer and the workman as to the workman's condition or fitness for employment, the registrar of a county court, on application being made to the court by both parties, may, on payment by the applicants of such fee not exceeding one pound as may be prescribed, refer the matter to a medical referee.

The medical referee to whom the matter is so referred shall, in accordance with regulations made by the Secretary of State, give a certificate as to the condition of the workman and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified.

Where no agreement can be come to between the employer and the workman as to whether or to what extent the incapacity of the workman is due to the accident, the provisions of this paragraph shall, subject to any regulations made by the Secretary of State, apply as if the question were a question as to the condition of the workman.

If a workman, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid, or in any way obstructs the same, his right to compensation and to take or prosecute any proceeding under this Act in relation to compensation, or, in the case of a workman in receipt of a weekly payment, his right to that weekly payment shall be suspended until such examination has taken place.

Rules of court may be made for prescribing the manner in which documents are to be furnished or served and applications made under this paragraph and the forms to be used for those purposes and, subject to the consent of the Treasury, as to the fee to be paid under this paragraph.

This is new.

By regulations of the Secretary of State, dated June 28th, 1907, it is provided:—

1. Where a workman has given notice of an accident, or is in receipt of weekly payments under the Act, he shall not be required to submit himself, against his will, for examination by a medical practitioner provided by the employer except at reasonable hours.
2. A workman in receipt of weekly payments shall not be required, after a period of one month has elapsed from the date on which the first payment of compensation was made, or if the first payment is made in obedience to the award of a committee or arbitrator, from the date of the award, to submit himself, against his will, for examination by a medical practitioner provided by the employer, except at the following intervals: Once a week during the second, and once a month during the third, fourth, fifth and sixth months, after the date of the first payment or the award, as the case may be, and thereafter once in every two months.

As to the duties of medical referees, and their appointment and payment, see sect. 10 and the notes thereon, *supra*.

As to the allowance of the workman's expenses incurred in an examination by a medical referee as costs in the arbitration, see Workmen's Compensation Rules, 1907, r. 6 (4).

As to the duties, procedure and remuneration of medical referees under this paragraph, see Parts I. and II. of the regulations of the Secretary of State and the Treasury (St. R. & O. 1907, No. 487), printed at p. 826, *infra*; and see r. 82, Workmen's Compensation Rules, 1907.

As to the procedure and costs of an application for reference under this paragraph, and the fee to be paid, see Workmen's Compensation Rules, 1907, r. 54.

As to application for a suspension or stay, see Workmen's Compensation Rules, 1907, r. 55.

No payment is to be made in respect of the period of suspension, Sched. I, para. (20).

By para. (13) Sched. II., it is provided: "No Court fee, except such as may be prescribed under para. (15) of the First Schedule to this Act, shall be payable by any party in respect of any proceedings by or against a workman under this Act in the Court prior to the award."

(16) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act:

Provided that where the workman was at the date of the accident under twenty-one years of age, and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding fifty per cent. of the weekly sum which the workman would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding one pound.

The proviso is new. See para. (1) (b), proviso (b) as to weekly payments in certain circumstances to workmen under twenty-one years of age; and paras. (9) (d) (e) and (10) of Sched. II., which protect persons under legal disability in cases of compensation by agreement. The proviso will apply in cases where the original award or agreement was under the Act of 1897.

Where there is no drop in wages (*rule* para. (3)), but there is evidence of loss of wage-earning capacity, nominal sums have been awarded to keep the right of "review" alive: *Irons v. Davies*, [1899] 2 Q. B. 330; *Chandler v. Smith*, [1899] 2 Q. B. 506; *Pomphrey v. Southwark Press*, [1901] 1 K. B. 86.

There must be a change in the circumstances of the case since the award or agreement fixing the weekly payment, or the last review thereof, in order to found an application for a review: *Crossfield v. Tanian*, [1900] 2 Q. B. 629; but this principle does not apply to a question of expert opinion as to the workman's condition and ability for work: *Sharman v. Holliday*, [1904] 1 K. B. 235. In the last-mentioned case the county court judge had by his award reduced the payment to a nominal amount; but where he had, on the application for review, made an award that the weekly payments should be ended, on the ground that the incapacity had ceased, a subsequent application for review and increase of the payment was refused on the ground that the award was, upon the true construction of it, final: *Nicholson v. Piper*, [1907] A. C. 215.

On an application for review, the arbitrator is not bound to treat the agreement for or award of a weekly payment as enforceable up to the time of his decision, but has jurisdiction to inquire whether the incapacity had ceased when the application to review was made, or at any and what subsequent time before the hearing, and to make his award with reference to the date so determined: *Morton & Co. v. Woodward*, [1902] 2 K. B. 275.

See rr. 8—12 and Form 5, Workmen's Compensation Rules, 1907.

As to the position of a person against whom an employer claims indemnification, in the case of an application for review by the employer, see r. 25, Workmen's Compensation Rules, 1907. But in case the employer do not apply for a review, there is no provision or rule giving the person against whom indemnity is claimed the right to apply for a review: so that he might become the victim of a collusive arrangement between employer and workman, by which compensation continued after the workman's recovery. The point was raised in *Thompson v. North Eastern Marine Engineering Co.*, [1903] 1 K. B. 428. Kennedy, J., thus deals with it (p. 437): "The answer, I think, is that, according to the general law of indemnity, the person indemnifying could in such a case compel the employer to let him use his name in any proceedings to enforce a review."

A review by agreement may be inferred from the conduct of the parties: *Bradbury v. Bedworth Coal and Iron Co.*, Times Newspaper, March 7, 1900, p. 3. But see *Williams v. Fauxhall Colliery Co., Ltd.*, [1907] 2 K. B. 433, where it was held by

the Court of Appeal that there was no evidence of abandonment by the workman of his right to further compensation. For an instance of the rescission of an agreement ending the compensation, on the ground of misrepresentation, see *Crossan v. Caledon Shipbuilding Co.* (1906), W. N. 101 (in the House of Lords).

(17) Where any weekly payment has been continued for not less than six months, the liability therefor may, on application by or on behalf of the employer, be redeemed by the payment of a lump sum *of such an amount as, where the incapacity is permanent, would, if invested in the purchase of an immediate life annuity from the National Debt Commissioners through the Post Office Savings Bank, purchase an annuity for the workman equal to seventy-five per cent. of the annual value of the weekly payment, and as in any other case may be settled by arbitration under this Act, and such lump sum may be ordered by the committee or arbitrator or judge of the county court to be invested or otherwise applied for the benefit of the person entitled thereto: Provided that nothing in this paragraph shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.*

The words in italics are new.

Under the Act of 1897 there was no maximum.

As to investment and application of sums paid in redemption under this paragraph, see Workmen's Compensation Rules, 1907, r. 59.

An employer may not apply for redemption subject to a limitation as to amount; he must leave the matter at large: *Castle Spinning Company, Ltd. v. Atkinson*, [1905] 1 K. B. 336.

In the case of redemption by agreement, the workman is protected against oppression or fraud by paragraphs (9) (d) (c) and (10) of Sched. II.

(18) *If a workman receiving a weekly payment ceases to reside in the United Kingdom, he shall thereupon cease to be entitled to receive any weekly payment, unless the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature. If the medical referee so certifies, the workman shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter so long as he proves, in such manner and at such intervals as may be prescribed by rules of court, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.*

This is new.

As to the fee and the procedure under this paragraph, see r. 60, Workmen's Compensation Rules, 1907; and Part III. rr. 14—18, of the Regulations, printed at p. 826, *infra*.

(19) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

Costs incurred by the respondent after payment into Court may, in certain circumstances, be deducted from the weekly payment: Rule 18, (6), (7), (8), Workmen's Compensation Rules, 1907. And see sect. 1, sub-sect. (4), *supra*, and Sched. II. (14).

(20) Where under this schedule a right to compensation is suspended no compensation shall be payable in respect of the period of suspension.

See paras. (4), (14), and (15), *supra*.

(21) Where a scheme certified under this Act provides for payment of compensation by a friendly society, the provisions of the proviso to the first sub-section of section eight, section sixteen, and section forty-one of the Friendly Societies Act, 1896, shall not apply to such society in respect of such scheme.

The proviso referred to prohibits the registration of a society which contracts with any person for the assurance of an annuity exceeding 50%, or a gross sum exceeding 200*l*.

Sect. 16 forbids the registration of "a society assuring a certain annuity," except upon condition of sending certified actuarial tables of contributions with the application for registration.

Sect. 41 limits the amount of annuities or gross sums to be received by members.

(22) In the application of this Act to Ireland the provisions of the County Officers and Courts (Ireland) Act, 1877, with respect to money deposited in the Post Office Savings Bank under that Act shall apply to money invested in the Post Office Savings Bank under this Act.

SECOND SCHEDULE.

ARBITRATION, &c.

(1) For the purpose of settling any matter which under this Act is to be settled by arbitration, if any committee, representative of an employer and his workmen, exists with power to settle matters under this Act in the case of the employer and workmen, the matter shall, unless either party objects by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as herein-after provided.

See notes on "The Arbitrator," at p. 657, *supra*.

The committee is free as to procedure.

As to the memorandum of the committee's award, see Workmen's Compensation Rules, 1907, r. 42 (1).

(2) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within six months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the judge of the county court, according to the procedure prescribed by rules of court.

See notes on "The Arbitrator," at p. 657, *supra*.

The rules of court are printed at p. 695, *infra*.

(3) In England the matter, instead of being settled by the judge of the county court, may, if the Lord Chancellor so authorises, be settled according to the like procedure, by a single arbitrator appointed by that judge, and the arbitrator so appointed shall, for the purposes of this Act, have all the powers of that judge.

See notes on "The Arbitrator," at p. 659, *supra*.

Sect. 10, sub-sect. (2), provides for the remuneration of an arbitrator appointed by the judge.

This paragraph does not apply to Scotland: see para. (17) (c).

There is no appeal direct to the Court of Appeal from the award of an arbitrator appointed under this paragraph: *Gibson v. Wormald*, [1904] 2 K. B. 40. See para. (4), *infra*.

(4) The Arbitration Act, 1889, shall not apply to any arbitration under this Act; but *a committee or an arbitrator* may, if *they or he* think fit, submit any question of law for the decision of the judge of the county court, and the decision of the judge on any question of law, either on such submission, or in any case where he himself settles the matter under this Act, or *where he gives any decision or makes any order under this Act*, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the Court of Appeal; and the judge of the county court, or the arbitrator appointed by him, shall, for the purpose of proceedings under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the proceedings *were an action* in the county court.

The words in italics are new.

The "submission" by committee or arbitrator is by special case: see r. 32, Workmen's Compensation Rules, 1907.

See notes on "The Arbitrator," at p. 658, *supra*.

For procedure on appeal, see Workmen's Compensation Rules, 1907, r. 71.

This paragraph does not apply to Scotland: see para. (17) (c).

See the note "Appeal," on sect. 5, *supra*.

An appeal lies only on a question of law: *Smith v. Lancashire and Yorkshire Rail. Co.*, [1899] 1 Q. B. 141.

Where he gives any decision or makes, &c. These words are very wide, and, it is submitted, would cover a refusal to review taxation of costs: if so, the decision in *Rigby & Co. v. Cox* (No. 1), [1904] 1 K. B. 358, no longer stands: see para. (7), *infra*.

(5) *A judge of county courts may, if he thinks fit, summon a medical referee to sit with him as an assessor.*

This is new.

See Workmen's Compensation Rules, 1907, r. 52, *infra*.

As to medical referees, see sect. 10, *supra*.

The remuneration of a medical referee summoned under this paragraph is fixed by Part IV. r. 19 of the Regulations of the Secretary of State and Treasury, dated June 24th, 1907, printed at p. 826, *infra*.

(6) Rules of court may make provision for the appearance in any arbitration under this Act of any party by some other person.

See Workmen's Compensation Rules, 1907, r. 33.

(7) The costs of and incidental to the arbitration and proceedings connected therewith shall be in the discretion of *the committee, arbitrator, or judge of the county court, subject as respects such judge and an arbitrator appointed by him to rules of court*. The costs, whether before *a committee or an arbitrator* or in the county court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules *and such taxation may be reviewed by the judge of the county court*.

The words in italics are new.

As to taxation of costs and review of taxation by judge see Workmen's Compensation Rules, 1907, rr. 61-64. In default of agreement the costs are to be taxed according to such of the county court scales as the tribunal may direct; in the absence of direction, according to the county court scale in fact applicable to the particular case.

An arbitrator has no jurisdiction to order a successful respondent to pay the applicant's costs: *Jones v. Great Central Rail. Co.* (1902), 18 Times L. R. 65; *Andrews v. Groves* (1900), 16 Times L. R. 297; nor to lay down a general rule as to costs in applications to review: *Rigby & Co. v. Cox* (No. 2), [1904] 2 K. B. 208. As to the decision in *Rigby & Co. v. Cox* (No. 1), [1904] 1 K. B. 358, see the note on para. (4), *supra*. An arbitrator may award a lump sum for costs: *Welland v. Great Western Rail. Co.* (1900), 16 Times L. R. 297.

(8) In the case of the death, or refusal or inability to act, of an arbitrator, *the judge of the county court* may, on the application of any party, appoint a new arbitrator.

The words in italics are new. Under the Act of 1897, the application was to a judge of the High Court in Chambers.

This paragraph does not apply to Scotland: see para. (17) (c).

See notes on "The Arbitrator" at p. 659, *supra*.

The procedure under this paragraph is regulated by Workmen's Compensation Rules, 1907, r. 40.

(9) Where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court, by the committee or arbitrator, or by any party interested, to the registrar of the county court who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a county court judgment.

Provided that—

- (a) *no such memorandum shall be recorded before seven days after the despatch by the registrar of notice to the parties interested; and*
- (b) *where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act and the employer, in accordance with rules of court, proves that the workman has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the judge of the county court, under the circumstances, may think just; and*
- (c) *the judge of the county court may at any time rectify the register; and*
- (d) *where it appears to the registrar of the county court, on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration, and refer the matter to the judge who shall, in accordance with rules of court, make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just; and*
- (e) *the judge may, within six months after a memorandum of an agreement as to the redemption of a weekly payment by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, has been recorded in the register, order that the record be removed from the register on proof to his satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order*

as to any sum already paid under the agreement) as under the circumstances he may think just.

The words in italics are new.

As to the sending, the authentication, and the recording of the memorandum, see Workmen's Compensation Rules, 1907, rr. 41-44.

Proviso (b). See Workmen's Compensation Rules, 1907, rr. 45-47.

Proviso (c). See Workmen's Compensation Rules, 1907, r. 48.

Proviso (d). See Workmen's Compensation Rules, 1907, r. 49; and para. (16), *infra*.

Proviso (e). See Workmen's Compensation Rules, 1907, r. 50; and para. (16), *infra*. There seems to be no power of removal under this proviso for mere inadequacy.

A certified copy of the memorandum must be filed before taking proceedings in a court other than that in which the original memorandum was recorded: Workmen's Compensation Rules, 1907, r. 74.

The memorandum when recorded may be enforced by an order of committal under the Debtors Act, 1869, s. 5: *Bailey v. Plant*, [1901] 1 K. B. 31. See Workmen's Compensation Rules, 1907, r. 68. A claim was made and not disputed, and the amount claimed paid by the employers for many weeks: *Held*, there was an agreement which should be registered: *Jones v. Great Central Railway* (1902), 18 Times L. R. 65. The registrar cannot refuse to record the memorandum merely because, owing to altered circumstances, the workman is no longer entitled to the amount of compensation fixed by the agreement: his only duty is to ascertain whether the memorandum accurately represents the agreement which has been entered into: *Blake v. Midland Rail. Co.*, [1904] 1 K. B. 503.

As to enforcement of an award, memorandum or certificate by execution or otherwise under the County Court Rules, see Workmen's Compensation Rules, 1907, rr. 67, 68, 69.

(10) *An agreement as to the redemption of a weekly payment by a lump sum if not registered in accordance with this Act shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment, and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependants, if not so registered, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation, unless, in either case, he proves that the failure to register was not due to any neglect or default on his part.*

This is new.

(11) Where any matter under this Act is to be done in a county court, or by, to, or before the judge or registrar of a county court, then, unless the contrary intention appear, the same shall, subject to rules of court, be done in, or by, to, or before the judge or registrar of, the county court of the district in which all the parties concerned reside, or if they reside in different districts, *the district prescribed by rules of court*, without prejudice to any transfer in manner provided by rules of court.

The words in italics are new.

See Workmen's Compensation Rules, 1907, rr. 73, 75 (transfer of proceedings); and Part L, 1 (vii) of the Regulations of the Secretary of State as to Medical Referees, at p. 827, *infra*.

Where the accident happened in England and the employer lived in Scotland it was held that proceedings might be taken in the county court of the district where the accident took place: *Rex v. Owen*, [1902] 2 K. B. 436; but having regard to the absence of apt words in the former Act to meet such a case it has been provided by the Workmen's Compensation Rules, 1907, r. 11 (6) that "where the accident occurred in England and any respondent resides in Scotland or Ireland, service on such respondent may be effected in accordance with this rule, and service so effected shall be deemed to be sufficient."

(12) The duty of a judge of county courts under this Act, or in England of an arbitrator appointed by him, shall, subject to rules of court, be part of the duties of the county court, and the officers of the court shall act accordingly, and rules of court may be made both for any purpose for which this Act authorises rules of court to be made, and also generally for carrying into effect this Act so far as it affects the county court, or an arbitrator appointed by the judge of the county court, and proceedings in the county court or before any such arbitrator, and such rules may, in England, be made by the five judges of county courts appointed for the making of rules under section one hundred and sixty-four of the County Courts Act, 1888, and when allowed by the Lord Chancellor, as provided by that section, shall have full effect without any further consent.

See Workmen's Compensation Rules, 1907, printed at p. 695, *infra*.

(13) No court fee, *except such as may be prescribed under paragraph (15) of the First Schedule* to this Act, shall be payable by any party in respect of any proceedings by or against a workman under this Act in the court prior to the award.

The fee referred to is that to be paid on an application for a reference to a medical referee under Sched. I., para. (15). This has been fixed by a Treasury order, dated May 30, 1907 (printed at p. 807, *infra*), at the amount prescribed by r. 54 (9) of the Workmen's Compensation Rules, 1907, which provides: "The fee payable by the applicant shall be calculated at the rate of one shilling in the pound on twenty-six times the amount of the weekly payments claimed by or payable to the workman, so that the total fee shall not exceed one pound."

See generally as to Court fees and their amount, the Treasury order, printed at p. 807, *infra*.

(14) Any sum awarded as compensation shall, *unless paid into court under this Act*, be paid on the receipt of the person to whom it is payable under any agreement, or award, and the solicitor or agent of a person claiming compensation under this Act shall not be entitled to recover from him any costs in respect of any proceedings in an arbitration under this Act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded *or agreed* as compensation, except such sum as may be awarded by *the committee*, the arbitrator, or the judge of the county court, on an application made *either by the person claiming compensation, or by his solicitor or agent*, to determine the amount of costs to be paid to the solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

The words in italics are new.

As to "payment into Court," see Sched. I., paras. (5), (7).

The procedure under this paragraph is regulated by Workmen's Compensation Rules, 1907, rr. 65, 66.

(15) *Any committee, arbitrator, or judge may, subject to regulations made by the Secretary of State and the Treasury, submit to a medical referee for report any matter which seems material to any question arising in the arbitration.*

This is new.

As to the procedure and remuneration of medical referees under this paragraph, see Workmen's Compensation Rules, 1907, r. 53; and Parts I. and V. of the Regulations of the Secretary of State and Treasury, dated June 24th, 1907, and printed at p. 826, *infra*.

As to the annexation of the report under this paragraph to the memorandum, see Workmen's Compensation Rules, 1907, r. 41 (2); and as to the allowance as costs in the arbitration of any reasonable travelling expenses incurred by the workman in travelling to be examined by the medical referee, see Workmen's Compensation Rules, 1907, r. 61 (5).

(16) *The Secretary of State may, by order, either unconditionally or subject to such conditions or modifications as he may think fit, confer on any committee representative of an employer and his workmen, as respects any matter in which the committee act as arbitrators, or which is settled by agreement submitted to and approved by the committee, all or any of the powers conferred by this Act exclusively on county courts or judges of county courts, and may by the order provide how and to whom the compensation money is to be paid in cases where, but for the order, the money would be required to be paid into court, and the order may exclude from the operation of provisos (d) and (e) of paragraph (9) of this Schedule agreements submitted to and approved by the committee, and may contain such incidental, consequential, or supplemental provisions as may appear to the Secretary of State to be necessary or proper for the purposes of the order.*

This is new.

See notes on "The Arbitrator," at p. 658, *supra*.

Powers under this paragraph have been conferred on the Durham Colliery Owners' and Miners' Joint Committee.

(17) In the application of this Schedule to Scotland—

- (a) "County court judgment" as used in paragraph (9) of this Schedule means a recorded decree arbitral;
- (b) Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by section fifty-two of the Sheriff Courts (Scotland) Act, 1876, save only that parties may be represented by any person authorised in writing to appear for them and subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by act of sederunt to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either division of the Court of Session, who may hear and determine the same and remit to the sheriff with instruction as to the judgment to be pronounced, *and an appeal shall lie from either of such divisions to the House of Lords*;
- (c) Paragraphs (3), (4), and (8) shall not apply.

The words in italics are new.

It was decided in *Osborne v. Borelay, Curle & Co.*, [1901] A. C. 269, that, having regard to the terms of the corresponding paragraph (14) in the Act of 1897, no appeal lay from the Court of Session to the House of Lords. That right of appeal is now given in terms.

(18) In the application of this schedule to Ireland the expression "judge of the county court" shall include the recorder of any city or town, *and an appeal shall lie from the Court of Appeal to the House of Lords.*

The words in italics are new.

THIRD SCHEDULE.

Description of Disease.	Description of Process.
Anthrax - - - - -	Handling of wool, hair, bristles, hides, and skins.
Lead poisoning or its sequelæ -	Any process involving the use of lead or its preparations or compounds.
Mercury poisoning or its sequelæ	Any process involving the use of mercury or its preparations or compounds.
Phosphorus poisoning or its sequelæ.	Any process involving the use of phosphorus or its preparations or compounds.
Arsenic poisoning or its sequelæ	Any process involving the use of arsenic or its preparations or compounds.
Ankylostomiasis - - - - -	Mining.

Where regulations or special rules made under any Act of Parliament for the protection of persons employed in any industry against the risk of contracting lead poisoning require some or all of the persons employed in certain processes specified in the regulations or special rules to be periodically examined by a certifying or other surgeon, then, in the application of this schedule to that industry, the expression "process" shall, unless the Secretary of State otherwise directs, include only the processes so specified.

This is new. See sect. 8, *supra*.

See the Order of the Secretary of State, printed in the notes to sect. 8, extending the provisions of that section to other diseases.

Special rules of the nature referred to have been made under the Factory Act, 1901; see p. 507, *supra*.

MASTER AND SERVANT. WORKMEN'S COMPENSATION ACT, 1906.

THE WORKMEN'S COMPENSATION RULES, 1907 AND 1908 (*h*).

The Workmen's Compensation Rules, 1898, the Workmen's Compensation Rules, 1899, and the Workmen's Compensation Rules, 1900, are hereby annulled, but shall continue to apply to cases where the accident happened before the commencement of the Workmen's Compensation Act, 1906, except so far as the provisions of that Act and of these Rules relating to references to medical referees and proceedings consequential thereon apply to those cases.

Former rules, how far annulled.

6 Edw. 7, c. 58.

(*h*) These latter rules came into operation on May 1, 1908. The following note is prefixed to them: "These Rules may be cited as the Workmen's Compensation Rules, 1908, or each Rule may be cited as if it had been one of the

Workmen's Compensation Rules, 1907 (herein referred to as the principal Rules), and had been numbered therein by the number of the Rule placed in the margin opposite such Rule."

Preliminary.

Effect, short title, commencement, and construction of Rules, 6 Edw. 7, c. 58.

1.—(1) The following Rules shall have effect under the Workmen's Compensation Act, 1906 (in these Rules referred to as the Act), with reference to any matter or proceeding for the regulation of which Rules of Court may be made under the Act, and generally for carrying the Act into effect so far as it affects the County Court or an arbitrator appointed by the judge of the County Court, and proceedings in the County Court or before any such arbitrator.

(2) These Rules may be cited as the Workmen's Compensation Rules, 1907, and shall come into operation on the first day of July, one thousand nine hundred and seven; but they shall not, except so far as they relate to references to medical referees and proceedings consequential thereon, apply to any case where the accident happened before the commencement of the Act.

(3) Expressions used in these Rules shall have the same meaning as the same expressions used in the Act.

52 & 53 Vict. c. 63.

(4) The Interpretation Act, 1889, shall apply for the purpose of the interpretation of these Rules as it applies for the purpose of the interpretation of an Act of Parliament.

(5) These Rules shall also be read and construed with the County Court Rules, 1903, and the County Court Rules of subsequent date amending the same; and any Order and Rule referred to by number in these Rules shall mean the Order and Rule so numbered in the County Court Rules, 1903, or in any County Court Rules of subsequent date, as the case may be.

Parties to Arbitration before Judge or Arbitrator appointed by Judge.

Parties to arbitration.

2.—(1) When application is made for the settlement by the judge, or by an arbitrator appointed by the judge, of any matter which under the Act is to be settled by arbitration, the party making such application shall be called "the applicant"; and, subject to these Rules, all other persons whose presence at the arbitration may be necessary to enable the judge or arbitrator effectively and completely to adjudicate upon and settle all the questions involved shall be made parties to the application, and shall be called "the respondents."

Ord. III., Rule 2.

(2) In any case in which both the principal as defined by the Act and a contractor with him are alleged to be liable to pay compensation under the Act, Order III., Rule 2, as to joinder of parties, shall apply.

Joinder of applicants. Ord. III., Rule 1. Ord. XLIV., Rules 18, 19.

3. More persons than one may be joined as applicants in one arbitration, in any case in which such persons might be joined in one action as plaintiffs under Order III., Rule 1; and that Rule, and Rules 18 and 19 of Order XLIV., shall, with the necessary modifications, apply to any such arbitration.

Application by dependants.

4.—(1) An application on behalf of the dependants of a deceased workman for the settlement by arbitration of the amount payable as compensation to such dependants may be made by the legal personal representative, if any, of the deceased workman on behalf of such dependants, or by the dependants themselves; and in either case the particulars to be filed as hereinafter mentioned shall contain particulars as to the dependants on whose behalf the application is made.

(2) Provided, that if there is any conflict of interest between the dependants

themselves, or if any dependants neglect or refuse to join in an application, the application may be made by or on behalf of some only of such dependants, the other dependants in either case being named as respondents.

(3) In the construction of this rule the term "dependants" shall include persons who claim or may be entitled to claim to be dependants, but as to whose claim to rank as dependants any question arises.

5.—(1) In any case in which the amount payable as compensation to the dependants of a deceased workman has been agreed upon or ascertained, but any question arises as to who are dependants, or as to the amount payable to each dependant, an application for the settlement of such question by arbitration may be made either by the legal personal representative, if any, of the deceased workman on behalf of the dependants or any of them, or by such dependants or any of them, against the other dependants, and the persons claiming or who may be entitled to claim to be dependants, but as to whose claim to rank as such a question arises; or such application may be made by the persons claiming to be dependants, but as to whose claim to rank as such a question arises, or any of them, against the legal personal representative, if any, of the deceased workman, and the dependants, and such of the persons claiming or who may be entitled to claim to be dependants as are not applicants.

Application by dependants under Act, Sched. I. para. 8, where amount of compensation agreed or ascertained.

(2) In any such case, if the employer has paid the agreed or ascertained amount of compensation, it shall not be necessary to make him a respondent, but if such compensation or any part thereof is still in his hands he shall be made a respondent.

(3) The employer, if made a respondent, may pay the amount of compensation in his hands into court, to be dealt with as the judge or arbitrator shall direct, and thereupon further proceedings against him shall be stayed.

(4) The registrar shall within twenty-four hours from the time of payment made pursuant to the last preceding paragraph send notice thereof to the applicant and to the other respondents (if any), and the employer shall not be liable to any costs otherwise than in accordance with para. 5 (c) of Rule 18.

Para. (4) is added by r. i of the Workmen's Compensation Rules, 1908.

6.—(1) An application for the settlement by arbitration of the sum payable in respect of medical attendance on and the burial of a deceased workman who leaves no dependants shall be made by the legal personal representative, if any, of the deceased workman. If there is no such legal personal representative, the application may be made by any person to whom any such expenses are due. In the latter case any other person known to the applicant as a person to whom any such expenses are due shall be joined in the application either as applicant or respondent.

Parties to arbitration as to sum payable for medical attendance and burial. Act, Sched. I. para. 1 (a)(iii).

(2) In any case in which application is made for the settlement by arbitration of such amount, the amount awarded, if insufficient for the payment of such expenses in full, shall be apportioned between the persons to whom such expenses are due in such manner as the judge or arbitrator shall direct.

Apportionment of such sum.

7. The provisions of Rules 7 and 8 of Order III., as to parties suing or defending on behalf of other persons having the same interest, and the provisions of the County Court Rules as to persons under disability and partners suing and being sued, shall, with the necessary modifications, apply to proceedings by way of arbitration under the Act.

Parties under disability and partners; representation of parties having the same interest.

Application for Arbitration.

Request for arbitration.

8.—(1) An application for the settlement of any matter by arbitration shall not be made unless and until some question has arisen between the parties, and such question has not been settled by agreement.

(2) Where any question has arisen and has not been settled by agreement, an application for the settlement of the matter by arbitration shall be made by the applicant filing with the registrar a request for arbitration, intituled in the matter of the Act and in the matter of the arbitration, which request shall state concisely the question which has arisen, and shall, with the subsequent proceedings thereon, be recorded in the special register hereinafter mentioned.

Particulars.

(3) Particulars shall be appended or annexed to the request, containing—

(a) A concise statement of the circumstances under which the application is made, and the relief or order which the applicant claims :

(b) The date of service of notice of the accident on the employer, or, if such notice has not been served, the reason for such omission ; and

(c) The full names and addresses of the respondents and of the applicant, and of his solicitor, if the proceedings are commenced through a solicitor.

Forms of request and particulars.

Forms 1 to 11.

9.—(1) The request and particulars shall be according to such one of the forms in the Appendix as shall be applicable to the case, with such modifications as the nature of the case may require.

(2) A copy of the notice of the accident shall be appended or annexed to the particulars. If this rule cannot be complied with, the reason for the omission shall be stated in the particulars.

Application by employer.

10.—(1) Where an employer on whom a claim for compensation has been made desires to make an application for the settlement of any matter by arbitration, he shall file a request for arbitration in accordance with Rule 8, to which the workman, or the legal personal representative, if any, and the persons claiming or who may be entitled to claim to be dependants of a deceased workman, or the other persons (as the case may be) on whose behalf the claim was made, shall be respondents.

(2) Particulars shall be appended or annexed to the request, containing—

(a) A concise statement of the circumstances under which the application is made ;

(b) A statement whether the applicant admits his liability to pay compensation, or denies such liability, wholly or partially, with (in the latter case) a statement of the grounds on and extent to which he denies liability ;

(c) A statement of the matters which the applicant desires to have settled by arbitration ; and

(d) The full names and addresses of the respondents and of the applicant, and of his solicitor, if the proceedings are commenced through a solicitor.

Copies for judge and respondents.

11. The applicant shall deliver to the registrar with the request and particulars a copy thereof for the judge or arbitrator, and a copy for each respondent to be served.

12. Where the applicant is illiterate and unable to furnish the required information in writing, the request and particulars and copies shall be filled up by the registrar's clerk. Where applicant is illiterate.

Proceedings on Arbitration before Judge.

Fixing Day and Place for Arbitration.

13.—(1) On the filing of a request for arbitration, the registrar shall transmit a copy of the request and particulars to the judge, who shall as soon as conveniently may be (if he decides to settle the matter himself) appoint a day and hour for proceeding with the arbitration. Such day shall be so fixed as to allow the copies of the request and particulars to be served on the respondents at least twenty clear days before the day so fixed. Fixing day and place for arbitration.

(2) The arbitration shall, subject as hereinafter mentioned, be held at the place at which the court is held.

(3) Provided, that the judge may direct that the arbitration shall be held at any other place within the district of the court, on application in that behalf made by any party to the arbitration, and on such party filing an undertaking to provide at his own expense a place to the satisfaction of the judge in which the arbitration may be held, and to pay the necessary expenses of the judge and officers of the court attending at such place.

(4) If such direction is given before the notices mentioned in the next following rule are issued, the registrar shall insert in such notices the place at which the arbitration has been so directed to be held.

(5) If such direction is given after such notices have been issued, the registrar shall forthwith send notice by post to the parties of the place at which the arbitration has been so directed to be held.

Notice of Day Fixed.

14.—(1) On the day for proceeding with an arbitration being fixed, the registrar shall give or send by post notice in writing to the applicant, stating the place at which and the day and hour on and at which the arbitration will be proceeded with, and shall issue the copies of the request and particulars, under the seal of the court, for service on the respondents, together with notices *signed by the registrar himself, and (j) under the seal of the court,* stating the place at which and the day and hour on and at which the arbitration will be proceeded with, and that if the respondents do not attend in person or by their solicitors such order will be made and proceedings taken as the judge may think just and expedient. Notice to parties.
Forms 12, 13.

(2) Where the request is filed by an employer, the notices to be served on the respondents shall be modified by the omission of the words therein relating to the denial or admission of liability to pay compensation. Notice where employer is applicant.
Form 13.

Service on Respondents.

15.—(1) The copies and notices mentioned in the last preceding rule shall be served on the respondents at least twenty clear days before the day fixed for proceeding with the arbitration. Service on respondents.

(j) The words in italics are eliminated by r. 3, Workmen's Compensation Rules, 1908.

(2) The copies and notices mentioned in the last preceding rule may be served—

- (a) By a bailiff of a court ;
- or, at the request of the applicant or his solicitor,
- (b) By the applicant, or some clerk or servant in his permanent and exclusive employ ; or
- (c) By the applicant's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them, or some person employed by either of them to serve such copies and notices, who might be so employed to serve a writ in an action in the High Court.

Act, sect. 2,
sub-sects. 3, 4.

(3) Service may be effected either in accordance with the rules as to service of default summonses, or by registered post in accordance with the provisions of sub-sections 3 and 4 of section 2 of the Act with reference to service of notice in respect of an injury, and the provisions of those sub-sections shall apply to such service.

Where service
effected
otherwise
than by
bailiff.

(4) Where service is effected otherwise than by a bailiff, a copy of the document served, with the date and mode of service indorsed thereon, shall, within three clear days next after the date of service, or such further time as may be allowed by the registrar of the court issuing such document, be delivered or transmitted to such registrar by the applicant. The applicant shall also (unless the respondent files an answer) after the time limited for filing an answer, deliver or transmit to the registrar an affidavit of the service of such document, according to Form 37 in the Appendix to the County Court Rules, with such variations as the circumstances of the case may require.

Service by
post.

(5) Where a document is served by post it shall, unless the contrary be proved, be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such document it shall be sufficient to prove that the same was properly addressed and registered.

Service on
respondent in
Scotland or
Ireland.

(6) Where the accident occurred in England, and any respondent resides in Scotland or Ireland, service on such respondent may be effected in accordance with this rule, and service so effected shall be deemed to be sufficient.

Stay of Proceedings.

Stay of
proceedings
in other
arbitrations
to abide
decision as to
liability in
selected
arbitration.
Ord. VIII.,
Rules 2—6.

16. Where several requests for arbitration are filed by different applicants against the same respondent in the same court in respect of matters arising out of the same circumstances, the respondent may, on filing an undertaking to be bound, so far as his liability to pay compensation is concerned, by the award in such one of the said arbitrations as may be selected by the judge, apply to the judge under Order VIII., Rule 2, for an order to stay proceedings in the arbitrations other than the one so selected until an award is made in such selected arbitration ; and Rules 2 to 6 of Order VIII. shall, with the necessary modifications, apply accordingly.

Answer by Respondent.

17.—(1) If any respondent desires to disclaim any interest in the subject-matter of an arbitration, or considers that the applicant's particulars are in any respect inaccurate or incomplete, or desires to bring any fact or document to the notice of the judge, or intends to rely on the fact that notice of the accident, or of death, disablement, or suspension, was not given as required by the Act, or that the claim for compensation was not made within the time limited by the Act, or intends to deny (wholly or partially) his liability to pay compensation under the Act, he shall, ten clear days at least before the day fixed for proceeding with the arbitration, file with the registrar an answer, stating his name and address, and the name and address of his solicitor (if any), and stating that he disclaims any interest in the subject-matter of the arbitration, or stating in what respect the applicant's particulars are inaccurate or incomplete, or stating concisely any fact or document which he desires to bring to the notice of the judge, or on which he intends to rely, or the grounds on and extent to which he denies liability.

Answer by
respondent.

Form 14.

(2) The respondent shall with such answer file copies thereof for the applicant and the judge, and one copy for each of the other respondents; and the registrar shall within twenty-four hours after receiving such copies transmit the same by post to the applicant and the judge and the other respondents respectively.

(3) Subject to any answer so filed, and to the provisions of the next following paragraph, the applicant's particulars, and, in the case of a claim for compensation, the liability to pay compensation under the Act, shall be taken to be admitted.

(4) Provided, that in case of non-compliance with this rule, and of the applicant's not consenting at the arbitration to permit a respondent to avail himself of any matter of which he should pursuant to this rule have given notice by filing an answer, the judge may, on such terms as he shall think fit, either proceed with the arbitration and allow the respondent to avail himself of such matter, or adjourn the arbitration to enable the respondent to file such answer.

(5) The provisions of this rule shall, with the necessary modifications, apply to a case in which a request for arbitration is filed by an employer; but a respondent who fails to file an answer shall not be taken to admit the truth of any statement in the applicant's particulars in which he denies, wholly or partially, his liability to pay compensation.

Answer
where
employer is
applicant.

Submission to Award or Payment into Court by Respondent.

18.—(1) Where a respondent from whom compensation is claimed admits liability, he may at any time before the day fixed for proceeding with the arbitration,—

Submission
to award or
payment into
court by
respondent.
Form 15.

(a) Where the application is made by an injured workman, file with the registrar a notice that the respondent submits to an award for the payment of a weekly sum, to be specified in such notice; or

- (b) Where the application is made on behalf of the dependants of a deceased workman, or for the settlement of the sum payable in respect of medical attendance on and the burial of a deceased workman who leaves no dependants, pay into court such sum of money as the respondent considers sufficient to cover his liability in the circumstances of the case.

Forms 16, 17. (2) The registrar shall within twenty-four hours from the time of any notice filed or payment made pursuant to the last preceding paragraph send notice thereof (with, where a notice is filed, a copy of such notice) to the applicant, and to the other respondents (if any).

Acceptance of weekly payment offered.
Form 18. (3) If the applicant is a workman, and elects to accept in satisfaction of his claim the weekly payment specified in the respondent's notice, he shall send to the registrar and to the respondent by post, or leave at the registrar's office and at the residence or place of business of the respondent, a written notice according to the form in the Appendix, stating such acceptance, within such reasonable time before the day fixed for proceeding with the arbitration as the time of filing of notice of submission by the respondent has permitted.

Acceptance of sum paid into court.
Form 18. (4) If the application for arbitration is made on behalf of the dependants of a deceased workman, or for the settlement of the sum payable in respect of medical attendance and burial as aforesaid, and the applicant is willing to accept the sum paid into court in satisfaction of the compensation payable to the dependants, or in respect of such medical attendance and burial (as the case may be), he shall send to the registrar and to the respondent by post, or leave at the registrar's office and at the residence or place of business of the respondent, a written notice of such willingness, according to the form in the Appendix, within such reasonable time before the day fixed for proceeding with the arbitration as the time of payment into court by the respondent has permitted.

If there are any other respondents, the applicant shall in like manner give notice of such willingness to such respondents; and if any of such respondents are willing to accept the sum paid into court in satisfaction of such compensation as aforesaid, they shall in like manner give notice of such willingness to the registrar and to the applicant and the other respondents.

Procedure if weekly payment offered or sum paid in is accepted. (5) If the applicant is a workman, and elects to accept in satisfaction of his claim the weekly payment submitted to by the respondent, or if in any other case the applicant and all the respondents give notice of their willingness to accept the sum paid into court, the following provisions shall apply:—

- (a) Where the respondent submits to an award for the payment of a weekly sum, the judge may, on application made to him in or out of court, forthwith make an award directing payment of such weekly sum accordingly;
- (b) Where the respondent has paid money into court, further proceedings against such respondent shall be stayed, except as hereinafter mentioned; and
 - (i) If the applicant and the other respondents agree as to the apportionment and application of such sum, the judge may, on application made to him in or out of court on behalf of or with the

consent of all such parties, forthwith make an award for such apportionment and application ;

(ii) In any other case the arbitration may proceed as between the applicant and the other respondents.

- (c) In any such case the judge may, in his discretion, by his award order the respondent filing notice of submission to an award or paying money into court to pay such costs as the applicant and the other respondents, or any of them, may have properly incurred before the receipt of notice of submission to an award or payment into court, including, if the judge on consideration of the facts of the case shall so order, any items which might have been allowed by order of the judge at the hearing of the arbitration.

Costs payable by respondent.

- (d) If the applicant or any respondent intends to apply for any such costs, he shall give notice of his intention in his notice of acceptance, according to the form in the Appendix ; or where the time of filing notice of submission to an award or the time of payment into court by the respondent does not permit of notice of acceptance being given, the applicant or any respondent may apply for such costs without giving such notice.

Form 18.

(6) Where any party has not given notice of acceptance in accordance with this rule, he may nevertheless accept the weekly payment which the respondent has submitted to pay, or the sum paid into court, at any time before the arbitration is called on and opened, subject to the payment of any costs which may have been reasonably incurred by the respondent since the date of filing notice of submission or the date of payment into court, and which may be allowed by the judge ; and the judge may order any costs so allowed to be paid by the party so accepting, and may order such costs to be set off against any costs payable to such party, or to be deducted from any weekly payment or compensation awarded to such party.

Acceptance at any time before arbitration opened.
Costs.

(7) In default of notice of acceptance by the applicant and all the respondents, the arbitration may proceed ; but if no greater weekly payment or compensation is awarded than that which the respondent has submitted to pay or has paid into court, such respondent shall not be liable to pay any further costs than such as he might have been ordered to pay if the weekly payment offered or sum paid into court had been accepted ; and the judge may order any costs incurred by such respondent after notice of submission to an award or payment into court to be paid by any party who has not given notice of acceptance of such weekly payment or sum, and may order such costs to be set off against any costs payable to such party, or to be deducted from any weekly payment or compensation awarded to such party. The judge may also order any costs incurred after notice of payment into court by any party who has given notice of acceptance to be paid by any other party who has not given such notice, and to be deducted from any compensation awarded to such last-mentioned party.

Procedure and costs if weekly sum offered or sum paid in is not accepted.

(8) The provisions of this rule shall, with the necessary modifications, apply to a case in which an employer who has filed a request for arbitration admits liability to pay compensation.

Submission to award or payment into court where employer is applicant.

Notice to Parties against whom Indemnity claimed under section 4.

Notice of
claim to
indemnity
under sect. 4.
Form 23.

19. Where a respondent claims to be entitled under section 4 of the Act to indemnity against any person not a party to the arbitration, he shall, ten clear days at least before the day fixed for proceeding with the arbitration, file a notice of his claim according to the form in the Appendix; and the registrar shall seal such notice and deliver it to the respondent, who shall serve the same, together with a copy of the applicant's request and particulars, and of the notice served on the respondent under Rules 14 and 15, upon the person against whom such claim is made; and the provisions of paragraphs 2 to 6 of Rule 15 shall apply to such service.

Appearance
by third
party.

20. If any person served with a notice under the last preceding rule (herein-after called the third party) desires to dispute the applicant's claim in the arbitration as against the respondent on whose behalf the notice has been given, or his own liability to such respondent, he must appear before the judge on the day fixed for proceeding with the arbitration, or on any day to which he may have received notice from the registrar that the arbitration has been adjourned or postponed; and in default of his so doing he shall be deemed to admit the validity of any award made against such respondent as to any matter which the judge has jurisdiction to decide in the arbitration as between the applicant and the respondent, whether such award is made by consent or otherwise, and his own liability to indemnify the respondent to the extent claimed in the notice served on him by the respondent.

Where notice
not served in
due time.

Provided, that if it appears to the judge before or at the arbitration that the notice of claim has not been served on the third party in time to enable him to appear on the day herein-before mentioned, or that for any other sufficient cause the third party is unable to appear on such day, the judge may adjourn the proceedings in the arbitration on such terms, as to costs and otherwise, as may be just.

Proceedings
on default of
appearance
by third
party.

21. If the third party fails to appear on the day mentioned in Rule 20, or, if the proceedings are adjourned under that rule, on the day to which the proceedings are adjourned, then if the arbitration results in an award in favour of the applicant, or the arbitration is finally decided in favour of the applicant otherwise than by an award, the judge may on the application of the respondent make such award as the nature of the case may require in favour of the respondent against the third party: but execution thereon shall not issue without leave of the judge until after satisfaction by the respondent of the award against him, or the amount recovered against him.

Provided, that the judge may set aside or vary any award made against the third party under this rule upon such terms as may be just.

Application
for directions.
What
directions
may be given.

22. The third party or the respondent may apply before or at the arbitration to the judge for directions: and the judge, upon the hearing of the application, may, if satisfied that there is a question proper to be determined as to the liability of the third party to make the indemnity claimed, in whole or in part, order the question of such liability as between the third party and the respondent giving the notice to be determined at or after the arbitration, and if not so satisfied may make such award as the nature of the case may require in favour of the respondent giving the notice against the third party: or the judge may, if it appears desirable so to do, give the third party leave

to resist the claim of the applicant against the respondent upon such terms as may be just, or to appear at the arbitration and take such part therein as may be just, and generally may give such directions as he may think proper for having the question most conveniently determined, and as to the mode or extent in or to which the third party shall be bound or made liable by the award in the arbitration.

23. The judge may decide all questions of costs as between a third party and the other parties to the arbitration, and may order any one or more to pay the costs of any other or others, or give such directions as to costs as the justice of the case may require.

Notice to Parties against whom Indemnity claimed under section 6, or otherwise.

24.—(1) Where a respondent claims that if compensation is recovered against him he will be entitled under section 6 of the Act, or otherwise than under section 4, to indemnify against any person not a party to the arbitration, he shall file and serve a notice of his claim in accordance with Rule 19.

Notice of claim to indemnify under sect. 6, or otherwise than under sect. 4.

(2) If any person served with a notice under the last preceding paragraph (herein-after called the third party) desires to dispute the applicant's claim in the arbitration as against the respondent on whose behalf the notice has been given, he must appear before the judge on the day fixed for proceeding with the arbitration, or on any day to which he may have received notice from the registrar that the arbitration has been adjourned or postponed; and in default of his so doing he shall be deemed to admit the validity of any award made against such respondent as to any matter which the judge has jurisdiction to decide in the arbitration as between the applicant and the respondent, whether such award is made by consent or otherwise.

Form 23.
If person served makes default in appearing, he is to be deemed to admit validity of award against respondent.

Provided, that if it appears to the judge before or at the arbitration that the notice of claim has not been served on the third party in time to enable him to appear on the day herein-before mentioned, or that for any other sufficient cause the third party is unable to appear on such day, the judge may adjourn the proceedings in the arbitration on such terms, as to costs or otherwise, as may be just.

Where notice not served in due time.

(3) The third party or the respondent may apply before or at the arbitration to the judge for directions; and the judge, upon the hearing of the application, may, if it appears desirable so to do, give the third party leave to resist the claim of the applicant against the respondent upon such terms as may be just, or to appear at the arbitration and take such part therein as may be just, and generally may give such directions as he shall think proper.

Application to judge for directions as to conduct of arbitration.

(4) If the third party obtains leave to resist the claim of the applicant against the respondent, the provisions of Rule 23 as to costs shall apply.

Costs.

(5) Nothing in this Rule shall empower the judge to decide (otherwise than by consent) any question as to the liability of the third party to indemnify the respondent, or to make any award in favour of the respondent against the third party, or to make any further or other order than that the third party shall not be entitled in any future proceedings between the respondent and such third party to dispute the validity of the award as to

Judge how far empowered to decide questions as to liability of third party.

any matter which the judge has jurisdiction to decide in the arbitration as between the applicant and the respondent.

(6) Provided, that with the consent of the respondent and the third party, —

- (a) If the arbitration results in an award in favour of the applicant, or is finally decided in favour of the applicant otherwise than by an award, and the third party admits his liability to indemnify the respondent, the judge may, on application made to him at or after the hearing of the arbitration or the final decision thereof, make such award as the nature of the case may require in favour of the respondent against the third party; but execution thereon shall not issue without leave of the judge until after satisfaction by the respondent of the award against him, or the amount recovered against him; or
- (b) The judge may, on an application for directions, order any question as to the liability of the third party to make the indemnity claimed to be settled, as between the respondent and the third party, by arbitration after the arbitration between the applicant and the respondent, and may on such subsequent arbitration make such award as the nature of the case may require in favour of either party against the other.
- (c) In any such case the judge may decide all questions of costs as between the respondent and the third party, and may order either of such parties to pay the costs of the other (including any costs payable by such party to any other party to the arbitration), or give such directions as to such costs as the justice of the case may require.

Third Party Procedure where Employer is Applicant.

Third party
procedure
where
employer is
applicant.

25. The provisions of Rules 20 to 24 shall, with the necessary modifications, apply to a case in which an employer who has filed a request for arbitration claims to be entitled to indemnity against any person not a party to the arbitration.

Claim to Indemnity as between Respondents.

Claim to
indemnity as
between
respondents.

26.—(1) Where a respondent claims to be entitled to indemnity against any other respondent, a like notice shall be issued and the like procedure shall thereupon be adopted for the determination of questions between the respondents as might be issued and adopted against such other respondent if such last-mentioned respondent were a third party.

(2) Nothing herein contained shall prejudice the rights of the applicant against any respondent.

Procedure on Arbitration.

Procedure in
arbitration.

27.—(1) Subject to the special provisions of these Rules, the procedure in an arbitration shall be the same as the procedure in an action commenced in the County Court by plaint and summons in the ordinary way, and determined by the judge without a jury; and the statutory provisions and rules for the time being in force relating to such actions shall, with the necessary modifications, apply to such arbitration accordingly; and in the application of such provisions and rules the applicant's request for arbitration shall be

deemed to be a summons with particulars annexed, the day fixed for proceeding with the arbitration shall be deemed to be the return day, and the applicant and respondents shall be deemed to be plaintiff and defendants respectively.

(2) Provided, that the burden of proof of any facts which are not admitted shall be the same, whoever the party may be by whom the request for arbitration is filed.

Burden of proof of facts not admitted.

Award.

28.—(1) The award of the judge on any arbitration shall be prepared and settled by the registrar, and shall be signed by the judge, and shall be sealed and filed, and sealed copies thereof shall be served on all persons affected thereby in accordance with Rule 7 of Order XXIII.; and such award shall be enforceable in the same manner as a judgment or order of the court.

Award.
Form 24.

Ord. XXIII.,
Rule 7.

(2) The judge shall have power at any time to correct any clerical mistake or error in such award arising from any accidental slip or omission.

Proceedings before Arbitrator appointed by Judge.

Appointment of Arbitrator by Judge.

29. With respect to the appointment of an arbitrator by the judge, the following provisions shall apply :—

Appointment of arbitrator by judge.

- (a) If with respect to any court the Lord Chancellor, by general order, authorises the settlement by an arbitrator appointed by the judge of matters which, in default of such authorisation, would be settled by the judge, the judge may from time to time, on an application being made for the settlement of any matter, either settle the same himself, or he may, with the approval of the Lord Chancellor, appoint, by writing under his hand, and filed in the court, an arbitrator to settle such matter.
- (b) If with respect to any court the Lord Chancellor makes no such general order as aforesaid, then, on an application being made for the settlement of any matter, the judge may (if from the state of business in the court, or for any other reason, he is unable to settle such matter within a reasonable time) apply to the Lord Chancellor to authorise the settlement of such matter by an arbitrator appointed by the judge.
- (c) If the Lord Chancellor does not grant such authority, the judge shall proceed to settle the matter in accordance with the Act and these Rules.
- (d) If the Lord Chancellor grants such authority, the judge may, with the approval of the Lord Chancellor, appoint, by writing under his hand, and filed in the court, an arbitrator to settle such matter.
- (e) In case of the death or refusal or inability to act of an arbitrator appointed under this rule, the judge may, on the application of any party, appoint a new arbitrator in accordance with this rule.

Fixing day for Arbitration.

Fixing day
and place for
proceedings
before
arbitrator.

30. Where any matter is to be settled by an arbitrator, the judge shall return the copy of the request for arbitration to the registrar, with the appointment of such arbitrator, to be transmitted to the arbitrator; and the registrar shall transmit the copy of the request and a copy of the appointment to the arbitrator, who shall, as soon as conveniently may be, appoint a day and hour for proceeding with the arbitration, in accordance with Rule 13, and the provisions of that rule as to the place where an arbitration shall be held shall apply. Provided, that where the arbitration is to be held at the place where the court is held, the day appointed for the arbitration shall, if possible, be one on which the court or other suitable accommodation in the court-house will be available for the arbitration.

Procedure before Arbitrator.

Procedure
before
arbitrator.

31.—(1) On the day for proceeding with an arbitration being fixed the registrar shall proceed according to Rule 14, and thence-forward the arbitration shall proceed in the same manner as an arbitration before the judge; and these Rules shall apply and the officers of the court shall act accordingly, with the substitution of the arbitrator for the judge.

(2) Provided that—

(a) In any case coming within the provisions of paragraph 5 (a) or paragraph 5 (b) (i) of Rule 18, or in any other case in which, after an arbitrator has been appointed, but before the day fixed for proceeding with the arbitration, the parties agree upon an award, the judge may, on application made to him in or out of court on behalf of or with the consent of all parties, settle the matter himself; and thereupon the functions of the arbitrator as to such matter shall cease, and the registrar shall forthwith inform him that the matter has been settled; and

(b) Any application for the enforcement of or for staying proceedings on an award, which would in the case of an award made by the judge be required to be made to the judge, shall, in the case of an award made by an arbitrator, be in like manner made to the judge.

Submission of Question of Law by Committee or Arbitrator to Judge.

Submission
of question of
law by
committee or
arbitrator to
judge.
Act, Sched. 2,
par. 4.
Statement of
case.

32.—(1) Where a committee or an arbitrator (whether agreed on by the parties or appointed by the judge) submits any question of law for the decision of the judge under paragraph 4 of the second schedule to the Act, such submission shall be in the form of a special case.

(2) The case shall be intitled in the matter of the Act and of the arbitration, and shall be divided into paragraphs numbered consecutively, and shall state concisely such facts and documents as may be necessary to enable the judge to decide the questions of law raised thereby. Upon the argument of the case the judge and the parties shall be at liberty to refer to the whole contents of such documents, and the judge shall be at liberty to draw from the facts and documents stated in the case any inference, whether of fact or

of law, which might have been drawn therefrom if proved at the hearing of an arbitration.

(3) The case shall be signed by the chairman and secretary of the committee or by the arbitrator, and sent to the registrar, who shall transmit the same to the judge, and the judge shall as soon as conveniently may be appoint a day and hour for hearing the case, and instruct the registrar to give notice thereof forthwith to the parties. The day shall be so fixed as to allow notice to be given ten days at least before the day fixed for the hearing, unless the judge shall, with the consent of all parties, fix an earlier day.

Fixing day for hearing.
Form 25.

(4) The registrar shall, on the application and at the cost of any party, furnish him with a copy of the case.

Copies of case.

(5) On the hearing of the case the judge may, after deciding the question submitted to him, remit the case with a memorandum of his decision to the committee or arbitrator, for them or him to proceed thereon in accordance with the decision; or if the decision of the judge on the question submitted to him disposes of the whole matter, he may himself make an award in the arbitration in accordance with such decision.

Power of judge on hearing of case.

(6) The judge may remit the case to the committee or arbitrator for re-statement or further statement.

Re-statement

(7) The judge shall have the same power over the costs of a special case as he has over the costs of an arbitration. or he may direct that such costs shall be dealt with as costs attending the arbitration; and the provisions of the Act and these Rules as to such costs shall apply accordingly.

Costs of special case.

Appearance of Parties in Arbitration.

33.—(1) A party to any arbitration under the Act may appear—

Appearance of parties.

(a) In person:

(b) By any solicitor who would be entitled to appear for such party in an action in the County Court:

(c) By counsel:

Or, by leave of the judge or arbitrator, a party may appear—

(d) By a member of his family:

(e) By a person in the permanent and exclusive employment of such party:

(f) In the case of a company or corporation, by any director of the company or corporation, or by the secretary or any other officer or any person in the permanent and exclusive employment of the company or corporation:

(g) By any officer or member of any society or other body of persons of which such party is a member or with which he is connected; or

(h) Under special circumstances, by any other person.

(2) No person other than a solicitor who appears or acts on behalf of any party in any arbitration under the Act shall be entitled to have or recover any fee or reward for so appearing or acting, other than such travelling expenses and (in the case of a workman or a member of his family) allowance for time (if any) as may be allowed by the judge or arbitrator: Provided that nothing in these rules contained shall affect the right of counsel to appear or act in any arbitration, or the right of any solicitor to recover costs in respect of his employment of counsel to appear or act as aforesaid.

Duty of Judge as to taking Notes.

Note to be taken of question of law raised, &c. and copy furnished.

34. At the hearing of any arbitration or special case the judge shall make a note of any question of law raised, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision in the arbitration or on the hearing of the case; and he shall, at the expense of any party to such arbitration or case, furnish a copy of the note so taken to or allow a copy of the same to be taken by or on behalf of such party, and shall sign such copy, whether a notice of motion by way of appeal has been served or not.

Proceedings against Insurers under Section 5.

Where rights of bankrupt, &c. employer against insurers vest in workman under sect. 5. Examination of employer as to insurance.

35.—(1) Where under section 5 of the Act the rights of an employer against any insurers under a contract entered into by the employer with the insurers in respect of any liability under the Act to any workman are transferred to and vest in the workman, the following provisions shall have effect.

(2) Where a workman who is or claims to be entitled to compensation from an employer to whom section 5 of the Act applies is unable to ascertain whether such employer has entered into a contract with insurers in respect of his liability, he may apply to the court on affidavit intituled in the matter of the Act, and setting forth the facts on which the application is made, for an order for the examination of the employer, and the court may make an order accordingly; and the provisions of Order XXV., Rules 71 and 72, shall apply in the same manner as if the employer were a debtor liable under a judgment or order.

Ord. XXV., Rules 71, 72.

Provisions as to arbitration. Form 11.

(3) The provisions of the Act and these Rules as to the settlement of matters by arbitration shall with the necessary modifications apply to the settlement by arbitration of any question as to the liability of the insurers or the amount of their liability.

Masters, Seamen, Apprentices, and Pilots. Section 7.

Masters, seamen, apprentices, and pilots.

36.—(1) In the application of the Act and these Rules in the case of masters, seamen, and apprentices to the sea-service and apprentices in the sea-fishing service, who are workmen within the meaning of the Act, and who are members of the crew of any such ship as in section 7 of the Act mentioned, and to pilots when employed on any such ship, the following provisions shall have effect.

Claim for compensation in case of death.

(2) In the case of the death of a master, seaman, apprentice, or pilot, the claim for compensation shall state the date at which news of the death was received by the claimant.

Where master, &c. lost with ship.

(3) The claim for compensation on behalf of dependants of a master, seaman, apprentice, or pilot lost with his ship, and the particulars appended or annexed to the request for arbitration, shall state the date at which the ship was lost or is deemed to have been lost.

Forms of request for arbitration. Forms 6, 7.

(4) A request for arbitration shall be according to such one of the forms in the Appendix as shall be applicable to the case, with such modifications as the nature of the case shall require.

(5) In any document, notice, or proceeding it shall be sufficient to describe the owners of the ship as "the owners of the ship"; and the provisions of the County Court Rules as to disclosure of the names of partners shall with the necessary modifications apply to the disclosure of the names of such owners.

(6) Subject to the provisions of paragraph (a) of section 7 of the Act as to service of the notice of accident and the claim for compensation, any document, notice, or proceeding to be served on the owners of a ship shall be deemed to be sufficiently served if served on the managing owner or manager for the time being of the ship, or (except where the master is claiming compensation) on the master of the ship; and section 696 of the Merchant Shipping Act, 1894, sub-section (1), shall apply to service on the master of the ship, and where the master is claiming compensation, and there is no managing owner of the ship, service may be effected in accordance with paragraph (c) of the said sub-section.

Detention of Ships. Section 11.

37.—(1) An application for an order for the detention of a ship under section 11 of the Act shall be made in accordance with the rules for the time being in force under the Shipowners' Negligence (Remedies) Act, 1905 (*jj*); and those rules, with the necessary modifications, shall apply accordingly.

(2) Subject to any such rules as in the last preceding paragraph mentioned, an application for an order for detention shall be made in accordance with the following rules.

(3) The application may (subject to the provisions of paragraph 9 of this rule) be made *ex parte* either in or out of court, according to the form in the Appendix, and shall be supported by affidavit or other evidence showing, to the satisfaction of the judge, the grounds on which the application is made.

(4) The judge may, before granting the application, require the applicant to give or procure an undertaking, to the satisfaction of the judge, to abide by any order as to damages and costs which may be thereafter made, in case any person affected by the order for detention shall sustain any damages by reason of the order which the applicant ought to pay.

(5) An order for detention shall specify the amount for which security shall be given, and shall be according to the form in the Appendix, and shall be issued in triplicate; one copy shall be delivered to the applicant, and the other two copies to the officer named by the judge; and one of such last-mentioned copies shall be delivered by the officer to the person who is at the time of the execution of the order apparently in charge of the ship, or, if there is no person apparently in charge, shall be nailed or affixed on the main mast or on the single mast of the ship; and the other copy shall be retained by the officer.

(6) The judge may at any time on good cause shown rescind any order for detention made by him.

(7) The provisions of sections one hundred and eight and one hundred and nine of the County Courts Act, 1888, and of Order XXIX., as to security, shall with the necessary modifications apply to the giving of security; and the approval by the judge of any security shall be signified

Description of owners in documents and proceedings.

Service of documents and proceedings.

Merchant Shipping Act, 1894, ss. 59, 696.

Application for detention of ship.

Act, s. 11. 5 Edw. 7, c. 10.

Application and evidence. Form 26.

Undertaking as to damages. Form 27.

Order and execution thereof. Form 28.

Rescission of order.

Security. County Courts Act, 1888, ss. 108, 109, Ord. XXIX.

- Form 29. in writing signed by him. Where security is given by bond, such bond shall be according to the form in the Appendix.
- Release. (8) If the judge rescinds any order for detention, or is satisfied that satisfaction has been made, or when security has been given and approved, or in any other case if the applicant so requires, the judge shall deliver to the party applying for the same an order according to the form in the Appendix, directed to the officer named in the order for detention, authorising and directing him, upon payment of all costs, charges, and expenses attending the custody of the ship, to release it forthwith.
- Form 30. (9) (a) With respect to notice of application for an order for detention, and to undertakings to give security, the following provisions shall have effect.
- Notice of application to agent or solicitor of owner. (b) Notwithstanding anything in this rule contained, a person intending to apply for an order for detention shall, if the name and address of an agent in England for the owners of the ship, or of a solicitor in England authorised to act for the owners, agent, master, or consignee of the ship, are known to him, give to such agent or solicitor, by post, telegram, or otherwise, such notice of the time and place at which the application for an order for detention is intended to be made as may be practicable in the circumstances of the case.
- Undertaking by solicitor. (c) If a solicitor in England represents that he is authorised to act for the owners, agent, master, or consignee of the ship, and signs an undertaking according to the form in the Appendix, to put in or give security for an amount agreed on between the parties or fixed by the judge, then, on such undertaking being filed in court,—
- Form 30A. (i) The judge may in his discretion refuse to make an order for detention; or
- (ii) If an order for detention has been made, but not executed, the judge may rescind it; or
- (iii) If an order for detention has been made and executed, the judge may deliver to the party applying for the same an order of release in accordance with paragraph (8) of this rule.
- Filing of undertaking. (d) An undertaking given in accordance with the last preceding paragraph shall be filed in the court to which the application for an order for detention is made or is intended to be made.
- Attachment for non-compliance with undertaking. (e) A solicitor who fails to put in or give security in pursuance of his undertaking to do so shall be liable to attachment.
- Particulars to state circumstances under which persons giving security are made respondents. (10) Where proceedings by way of arbitration for the recovery of compensation are taken against the persons giving security, the request for arbitration and particulars shall state concisely the circumstances under which the persons giving security are made respondents.
- Form 8. (11) Where proceedings are commenced in any court in England, Scotland, or Ireland other than that in which the order for detention was made or applied for, the registrar of the court in which the order was made or applied for shall on request transmit by registered post to the registrar of the court in which the proceedings are commenced all original documents filed in the matter, and a certified copy of all records made with reference to the matter, and any bond by way of security given in the matter, and shall transfer to such last-mentioned court any money paid into court by way of security in the matter; and the provisions of Order VIII., Rule 9, as to the costs of
- Transmission of documents, &c. where proceedings commenced in court other

copies and the costs of transmission shall apply to any transmission under this paragraph.

(12) The costs incurred by any party in relation to an application for an order of detention and any proceedings consequent thereon may in any subsequent proceedings by way of arbitration be allowed as costs of the arbitration.

than that in which order for detention made or applied for. Costs of application for order for detention.

Proceedings where Employer who has paid Compensation, or from whom Compensation is claimed, desires to obtain Order for Detention of Ship.
5 Edw. 7, c. 10.

38. Where an employer who has paid compensation or against whom a claim for compensation has been made under the Act desires to make an application for the detention of a ship under the Shipowners' Negligence (Remedies) Act, 1905 (*jj*), the provisions of the last preceding rule shall apply, subject to the rules for the time being in force under the last-mentioned Act, and to the following modifications, viz. :

Application by employer for detention of ship.
5 Edw. 7, c. 10.

- (i) An application for an order for detention, an order for detention, and a bond given by way of security, shall be according to the forms in the Appendix. Forms 31, 32, 33.
- (ii) Where proceedings by way of arbitration for the recovery of compensation are taken against the employer, he may bring in the persons giving security as third parties in accordance with Rule 24, and the provisions of that rule shall apply accordingly. Form 23.
- (iii) Where such proceedings are taken against the employer in any court other than that in which the order for detention was made or applied for, and the employer brings in the persons giving security as third parties, the provisions of paragraphs 11 and 12 of the last preceding rule shall apply.
- (iv) Where the employer has paid compensation in respect of the injury, all questions as to his right to indemnity against the persons giving security, and as to the amount of such indemnity, shall in default of agreement be settled by action, or, by consent of the parties, by arbitration in accordance with the Act and these Rules; and if such questions are settled by arbitration, the provisions of paragraphs 10 to 12 of the last preceding rule shall apply.

Industrial Diseases.

39.—(1) In the application of the Act and these Rules in the case of a workman disabled by or suspended on account of his having contracted any disease mentioned in section 8 of and the third schedule to the Act, or in any order of the Secretary of State made under sub-section 6 of the said section, or disabled by or suspended on account of his having sustained any injury due to the nature of any employment specified in any such order, not being an injury by accident, or in the case of a workman whose death has been caused by any such disease or injury as above mentioned, the following provisions shall have effect (*k*).

Application of Act and rules to cases of industrial diseases.

- (2) The notice required by section 2 of the Act shall state the date and Notice of disablement.

(*jj*) Printed at p. 857, *infra*.

(*k*) The words in italics are added to the original para. (1) by r. 2 of the Workmen's Compensation Rules, 1903.

cause of the disablement or suspension; and where a certificate of disablement or a certificate of or relating to suspension has been given, a copy thereof shall on demand be furnished to the employer.

Forms of
request for
arbitration.
Forms 9, 10.

(3) A request for arbitration shall be according to such one of the forms in the Appendix as shall be applicable to the case, with such modifications as the nature of the case may require.

Adding
respondent
under Act,
s. 8 (1) (c) (ii).
Forms 19, 20.

(4) (a) If the employer desires to add any other employer as a party to the arbitration, pursuant to proviso (ii) to paragraph (c) of sub-section (1) of section 8 of the Act, he shall file with the registrar in duplicate a notice according to the form in the Appendix; and thereupon the registrar shall make an order adding such other employer as a respondent, and may if necessary adjourn the hearing of the arbitration for such time as may be necessary to enable such other employer to be duly served.

Notice of
order, and
service on
added
respondent.

(b) Where a respondent is added under the last preceding paragraph, copies of the notice pursuant to which he is so added, and of the order, shall be sent by post to the applicant and the original respondent; and the like copies, together with a copy of the applicant's request and particulars, and of the notice served on the original respondent under Rules 14 and 15, and a notice according to the form in the Appendix as to the place at which and the day and hour on and at which the arbitration will be proceeded with, shall be issued by the registrar for service on the added respondent; and such copies and notices shall be served on the added respondent in accordance with Rule 15, with the substitution of the original respondent for the applicant.

Forms 21, 22.

Application
of rules to
added
respondent.
Procedure at
arbitration.

(c) The provisions of these Rules as to respondents shall apply to the added respondent from the date of service on him as if he had been originally made a respondent.

Costs.

(d) At the hearing of the arbitration the judge or arbitrator shall decide all questions as between the applicant and the original and added respondents, and may make such award as may be necessary effectively and completely to adjudicate upon and settle all the questions involved in the arbitration, and may make such order as to costs as between the applicant and the respondents, and as between the respondents themselves, as may be just.

Claim to
contribution
under Act,
s. 8 (1) (c) (iii).
Form 23.

(5) Where the employer claims under proviso (iii) to paragraph (c) of sub-section (1) of section 8 of the Act to be entitled to contribution from any other employer, he may bring in such other employer as a third party in accordance with Rules 19 to 23, 25 and 26; and the provisions of those rules shall with the necessary modifications apply to any such claim to contribution in like manner as they apply to claims to indemnity.

Appointment of Arbitrator by Judge in place of Arbitrator agreed on by the Parties under Schedule II., Paragraph 8.

Application
for appoint-
ment.
Form 34.

40.—(1) In case of the death or refusal or inability to act of an arbitrator agreed on by the parties, any party to the arbitration who desires to make an application to the judge to appoint a new arbitrator shall apply in writing to the registrar to fix a time and place for the hearing of such application.

Fixing of
hearing by
registrar.

(2) The registrar shall fix the hearing of the application before the judge for any court appointed to be held within fourteen days from the date of the

application to the registrar, but so that he shall not, except by consent, fix the hearing for a day less than seven days from the date of the application.

(3) If there is no available court, the registrar shall send notice of the intended application to the judge, who shall as soon as conveniently may be fix a time and place for the hearing of the application. Such time shall not, except by consent, be less than seven days from the date of the application to the registrar. Fixing of hearing by judge.

(4) On the time and place for the hearing of the application being fixed, the registrar shall issue to the applicant a summons under the seal of the court according to the form in the Appendix, addressed to the other party to the arbitration, and requiring him to attend on the hearing of the application. Summons to other party. Form 35.

(5) Such summons shall be served by the applicant on the other party in accordance with Rule 15 of these Rules not less than four clear days before the day fixed for the hearing, unless such party agrees to accept shorter service. Service of summons.

(6) On the day fixed for the hearing the judge shall dispose of the application on hearing the parties, or on hearing the applicant and on proof of service of the summons on the other party, if such other party does not appear. Hearing of application.

(7) Before appointing any person to act as arbitrator, the judge shall ascertain that such person is willing to serve if appointed. Ascertainment of willingness to act.

(8) The appointment may be made by indorsement on the summons, or by a separate order. Order.

(9) The costs of the application shall be in the discretion of the judge, who may order the same to be paid by one party to the other, or to be dealt with as costs attending the arbitration. Such costs, if allowed, shall be taxed on such scale as the judge shall direct. Costs.

Memorandum under Schedule II., Paragraph 9.

41.—(1) The memorandum as to any matter decided by a committee or by an arbitrator or by agreement, which is by paragraph 9 of the second schedule to the Act required to be sent to the registrar, shall be intituled in the matter of the Act, and shall be left at the office of the registrar, or sent by post by registered letter addressed to the registrar at his office, as soon as may be after the matter has been decided. Memorandum to be sent to registrar. Act, Sched. 2, par. 9. Form 36.

(2) Where the matter is decided after a medical referee has been appointed to report on any matter under paragraph 15 of the second schedule to the Act, a copy of the report of the referee shall be annexed to the memorandum and recorded therewith; and if the referee attended any proceeding in the arbitration, it shall be so stated in the memorandum.

42.—(1) If the matter is decided by a committee or an arbitrator, the memorandum shall be authenticated by the signatures of the chairman and secretary of the committee, or by the signature of the arbitrator; and it shall be the duty of the committee or arbitrator, as soon as may be after the decision, to draw up such memorandum and to sign the same or cause it to be signed as aforesaid, and to leave or send the same as aforesaid, or to deliver the same to some party interested, to be by him so left or sent. Authentication of memorandum of decision of committee or arbitrator.

Authentica-
tion of
memorandum
of agreement.

(2) If the matter is decided by agreement, the memorandum shall be authenticated by the signatures of all parties to such agreement, or by the signatures or signature of some or one of them, or by the signatures or signature of the solicitors to the parties or some or one of them on their or his behalf.

Copies.

(3) There shall be left or sent with the memorandum a copy thereof for every party interested, other than the party (if any) by whom the memorandum is left or sent.

Notice to
parties
interested of
memorandum
having been
received.
Form 37.

43. On the receipt of the memorandum the registrar shall send one of the copies thereof to every party interested, with a notice according to the form in the Appendix, requesting such party to inform him within seven days from the date of the notice whether the memorandum is genuine, or whether he disputes it, and, if so, in what particulars, or objects to its being recorded, and, if so, on what grounds.

Recording of
memoran-
dum, if not
disputed.

44. If all the parties interested admit the genuineness of the memorandum, or do not within such period of seven days dispute it or object to its being recorded, the registrar shall, subject to proviso (d) to paragraph 9 of the second schedule to the Act, and to Rule 49, record it without further proof.

Where
memorandum
disputed, or
employer
objects to its
being
recorded.
Act, Sched. 2,
par. 9 (b).
Form 38.

45. If any party interested disputes the genuineness of the memorandum, or if, where a workman seeks to record a memorandum of agreement between his employer and himself, the employer alleges that the workman has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of the memorandum, such party or employer shall within seven days from the date of the notice mentioned in Rule 43 file with the registrar a notice according to the form in the Appendix that he disputes the genuineness of the memorandum or that he objects to its being recorded, and shall with such notice file a copy thereof for each of the other parties interested.

Notice of
dispute or
objection.
Form 39.

46. On the receipt of any such notice as in the last preceding rule mentioned, the registrar shall send a copy thereof to each of the other parties interested, together with a notice according to the form in the Appendix, informing such party that the memorandum will not be recorded except with the consent in writing of the party or employer disputing the same or objecting to the same being recorded, or by order of the judge.

Subsequent
proceedings.

47.—(1) If the consent mentioned in the last preceding rule is obtained, the registrar shall, subject to proviso (d) to paragraph 9 of the second schedule to the Act, and to Rule 49, record the memorandum without further proof.

(2) If such consent cannot be obtained, any party interested may apply to the judge to order the memorandum to be recorded.

Proceedings for Record of Memorandum or Rectification of Register.

Proceedings
on applica-
tion for
record of
memorandum
or rectifica-
tion of
register.
Form 40.

48. The following provisions shall apply to an application for an order that a memorandum be recorded, or an application to the judge to rectify the register pursuant to paragraph 9 of the second schedule to the Act.

(a) The application shall be made in court on notice in writing, stating the relief or order which the applicant claims.

- (b) The notice shall be filed with the registrar, and copies thereof shall be served—
- (i) in the case of an application for an order that a memorandum be recorded, on the party disputing the memorandum or objecting to its being recorded, and on all other parties interested;
 - (ii) in the case of an application to rectify the register, on every party who would be affected by such rectification, subject to the provisions of these Rules as to the parties to an arbitration ;
or on the solicitor of such party, ten clear days at least before the hearing of the application, unless the judge or registrar gives leave for shorter notice.
- (c) On the hearing of the application witnesses may be orally examined in the same manner as on the hearing of an action.
- (d) On the hearing of the application the judge may make such order or give such directions as he may think just, regard being had, in the case of an application for an order that a memorandum of an agreement be recorded, to proviso (d) to paragraph 9 of the second schedule to the Act.
- (e) The provisions of the Act and these Rules as to the costs of an arbitration before the judge shall apply to any such application.

Reference of Agreement presented for Registration to the Judge.
Schedule II., Paragraph 9, Proviso (d).

49.—(1) Where a memorandum of an agreement presented for registration relates to any matter referred to in proviso (d) to paragraph 9 of the second schedule to the Act, the registrar may, before recording the same, make such inquiries and obtain such information as he may think necessary in order to satisfy himself whether the memorandum may properly be recorded, regard being had to the said proviso.

Proceedings where agreement presented for registration is referred by registrar to judge.

(2) Where it appears to the registrar that the memorandum ought not to be recorded for any reason mentioned in the said proviso, he shall make a report to the judge in writing, stating the information he has obtained, and the grounds on which it appears to him that the memorandum ought not to be recorded.

Act, Sched. 2, par. 9, proviso (d).

(3) If on consideration of the registrar's report it appears to the judge that the memorandum may properly be recorded, he may so direct, and it shall be recorded accordingly.

(4) If on consideration of the registrar's report it appears to the judge that the memorandum should not be recorded without further inquiry, the registrar shall send notice to the parties to the agreement according to the form in the Appendix, informing them that he has referred the matter to the judge, and requiring them to attend on a day to be named in the notice, when the matter will be inquired into by the judge.

Form 41.

(5) The notices shall be sent to the parties or their solicitors ten clear days at least before the day fixed for the inquiry, unless the judge directs shorter notice to be given.

(6) At the inquiry witnesses may be orally examined in the same manner as on the hearing of an action.

(7) At the inquiry the judge may make such order or give such directions as he may think just.

(8) The provisions of the Act and these Rules as to the costs of an arbitration before the judge shall apply to any such inquiry.

Proceedings for Removal of Record of Memorandum of Agreement from Register under Schedule II., Paragraph 9, Proviso (c).

Application for removal of agreement from register, Act, Sched. 2, par. 9, proviso (c).

Form 12.

Notice where inquiry directed by judge.

Form 13.

50.—(1) An application to the judge by or on behalf of any party for the removal from the register of the record of a memorandum of an agreement under proviso (c) to paragraph 9 of the second schedule to the Act shall be made in court on notice in writing: and the provisions of Rule 48 shall apply to the proceedings on such application.

(2) If it appears to the judge on a report by the registrar without such application as in the last preceding paragraph mentioned that the record of a memorandum of an agreement should be removed from the register pursuant to the said proviso, the registrar shall send notice to the parties to the agreement according to the form in the Appendix, requiring them to attend on a day to be named in the notice, when the matter will be inquired into by the judge.

(3) Such notice shall be sent and the inquiry held in accordance with the provisions of the last preceding rule, and the provisions of that rule shall apply to any such inquiry.

Certificate under Section 1, Sub-section 4.

Certificate under Act, sect. 1, sub-section 4.

Form 44.

51.—(1) Where an action is brought in the County Court to recover damages independently of the Act for injury caused by any accident, and the court proceeds under sub-section 4 of section 1 of the Act, the certificate given by the court shall be according to the form in the Appendix.

(2) The registrar shall, on receiving a certificate given by any other court under the said sub-section, record the same in like manner as if such certificate were an award made by the judge.

Summoning Medical Referee as Assessor under Schedule II., Paragraph 5.

Application for assessor, Act, Sched. 2, par. 5.

Form 45.

Assessor to be summoned if judge approves.

Notice where judge does not approve.

Form 46.

52.—(1) Any party to an arbitration may eight clear days at least before the day fixed for proceeding with the arbitration file with the registrar an application according to the form in the Appendix, requesting the judge to summon a medical referee to sit with him as an assessor under paragraph 5 of the second schedule to the Act.

(2) On the receipt of an application for an assessor the registrar shall forward a copy of the same to the judge, who if he thinks fit shall return the same with his approval, and thereupon the registrar shall forthwith summon an assessor.

(3) If the judge does not think fit that an assessor shall be summoned, notice thereof shall be given by the registrar to the applicant, according to the form in the Appendix.

(4) If the judge thinks fit, either on the application of any party to an arbitration or on his own motion, to summon a medical referee to sit with him as an assessor, the registrar shall forthwith summon one of the medical referees appointed by the Secretary of State for the area comprising the district of the court in which the arbitration is pending, by sending to such medical referee by post a summons according to the form in the Appendix.

Summoning of assessor if judge approves or so directs.

Form 47.

(5) If at the time and place appointed for the arbitration the medical referee summoned does not attend, the judge may either proceed with the arbitration without the assistance of an assessor, or he may adjourn the hearing.

Where assessor fails to attend.

Appointment of Medical Referee to Report under Schedule II., Paragraph 15.

53.—(1) Subject to and in accordance with regulations made by the Secretary of State and the Treasury under paragraph 15 of the second schedule to the Act, the judge may submit to a medical referee for report any matter which seems material to any question arising in an arbitration.

Appointment of medical referees to report under Act, Sched. 2, par. 15.

(2) When any matter is submitted as aforesaid, the judge may, subject to and in accordance with such regulations, order the injured workman to submit himself for examination by the medical referee; and it shall be the duty of the workman, on being served with such order, to submit himself for examination accordingly.

Application for Reference to Medical Referee under Schedule I., Paragraph 15.

54.—(1) With respect to applications to the registrar pursuant to paragraph 15 of the first schedule to the Act to refer any matter to a medical referee, the following provisions shall have effect.

Application for reference to a medical referee under Act, Sched. 1, par. 15.

(2) An application to the registrar to refer any matter to a medical referee shall be made in writing, and shall contain a statement of the facts which render the application necessary, according to the form in the Appendix, and shall be accompanied by a copy of the report of every medical practitioner who has examined the workman either on behalf of the employer or on the selection of the workman. The application shall be signed by or on behalf of both parties; and the applicant shall file copies of the application and reports for the use of the medical referee.

Form 48.

(3) On the hearing of the application the registrar shall refer the matter to one of the medical referees appointed for the area comprising the district of the court: and shall forward to such medical referee by registered post one of the filed copies of the application and reports, with an order of reference according to the form in the Appendix.

Form 49.

(4) The registrar shall also make an order directing the workman to submit himself for examination by the medical referee, subject to and in accordance with any regulations made by the Secretary of State.

Form 50.

(5) Before making such order the registrar shall inquire whether the workman is in a fit condition to travel for the purpose of examination, and if satisfied that he is in a fit condition shall by the order direct him to attend at such time and place as the referee may fix, and if satisfied that he is not in a fit condition to travel shall so state in the order of reference; and

it shall be the duty of the workman, on being served with the order, to submit himself for examination accordingly.

(6) The registrar shall deliver or send by registered post to each party a copy of the order of reference, and shall send to the workman a copy of the order directing him to submit himself for examination.

(7) The medical referee shall forward his certificate in the matter to the registrar by registered post.

Form 51.

(8) On the receipt of the certificate of the medical referee the registrar shall inform the parties by post that it has been received, and shall permit any party to inspect the same during office hours, and shall on the application and at the cost of either party furnish him with a copy of the certificate, or allow him to take a copy thereof.

(9) The fee payable by the applicant shall be calculated at the rate of one shilling in the pound on twenty-six times the amount of the weekly payments claimed by or payable to the workman, so that the total fee shall not exceed one pound.

(10) The costs of any application to the registrar, including the fee paid under the last preceding paragraph, may be allowed as costs in any subsequent arbitration for the settlement of the weekly payment to be made to the workman, or, where the application is made after the weekly payment has been settled, as costs in any subsequent arbitration as to the review of such weekly payment.

Suspension of Proceedings or Weekly Payments on Refusal to Submit to Examination under Schedule 1, Paragraph 4, Paragraph 14, or Paragraph 15.

Application to stay proceedings or suspend weekly payments on refusal of workman to submit to examination under Act, Sched. 1, par. 4, par. 14, or par. 15.

55.—(1) In any case in which a workman has given notice of an accident, or is receiving weekly payments under the Act, and the employer alleges that the workman refuses to submit himself to medical examination in accordance with paragraph 4, paragraph 14, or paragraph 15 of the first schedule to the Act, or in any way obstructs such examination, the employer may apply for a suspension of the right to compensation and to take or prosecute any proceedings under the Act in relation to compensation, or of the right to the weekly payments, until such examination has taken place, in accordance with this rule.

(2) Where proceedings are pending before a committee or an arbitrator agreed on by the parties, the application shall be made to such committee or arbitrator.

(3) Where the workman has given notice of an accident, but no proceedings are pending, or proceedings are pending before the judge or an arbitrator appointed by him, the application shall be made to the judge.

(4) Where the workman is receiving weekly payments under an award, memorandum, or certificate, then

- (a) If proceedings for the review of the weekly payment are pending before a committee or an arbitrator agreed on by the parties, the application shall be made to such committee or arbitrator;
- (b) If no proceedings for review are pending, or if proceedings for review are pending before the judge or an arbitrator appointed by him, the application shall be made to the judge.

(5) Where the application is to be made to the judge, it may be made in Form 52. or out of court in accordance with Rule 48; and the provisions of the said rule shall apply to the proceedings on such application, with the following modification:—

- (a) The notice shall be served on the workman or his solicitor five clear days before the hearing of the application, unless the judge or registrar gives leave for shorter notice.

Payment into Court and Investment and Application of Money payable in case of Death. Schedule I., Paragraph 5.

56A (1).—(1) *Where any payment in the case of death is to be paid into the County Court pursuant to paragraph 5 of the first schedule to the Act, the following provisions shall have effect.*

(2) *Where any money is to be paid into court under an award made by the judge or an arbitrator appointed by him, payment shall be made in accordance with the directions contained in the award.*

(3) *In any other case payment shall be made into the court in which the memorandum of the decision, award, or agreement under which the money is to be paid, or the certificate under which the money is to be paid, has been or is to be recorded.*

(4) *If there is no dispute as to the amount payable, but no valid agreement can be come to by reason of the disability or absence of the dependants or any of them, payment shall be made into the court in which, if a valid agreement could be come to in the matter, such agreement would be recorded.*

(5) *Where money is to be paid into court under paragraph 2 or paragraph 3 of this rule, the employer shall lodge with the registrar a praecipe in duplicate according to the form 53 in the Appendix, and where money is to be paid into court under paragraph 4, the employer shall lodge with the registrar a praecipe in duplicate according to the form 53A in the Appendix. The employer shall annex to one copy of the praecipe a form of receipt, and the registrar, on receipt of the sum paid in, shall sign the receipt and return the same to the employer; and the employer shall forthwith give notice to the persons interested in the sum paid in of such payment having been made.*

(6) *On the payment of money into court, the registrar shall forthwith send by post to each of the persons appearing by the award, memorandum, certificate, or praecipe to be interested in such money a notice of the said payment according to the form 53B in the Appendix. Provided that in the case of infant dependants residing with their mother or guardian it shall be sufficient to send such notice to the mother or guardian only.*

(7) *If all questions as to who are dependants and the amount payable to each dependant have been settled by agreement or arbitration before payment into court, the sum paid into court shall be allotted between the dependants in accordance with the agreement or award, and the amount allotted to each dependant shall be invested, applied, or otherwise dealt with by the court for the benefit of the person entitled thereto in accordance with paragraph 5 of the first schedule to the Act.*

(8) *If such questions have not been settled before payment into court, then—*

(a) *If all the persons interested in the sum paid into court agree to leave the*

(1) This rule is substituted for the original Rule 56 by the Workmen's Compensation Rules, 1908.

Payment into court, investment, and application of payment in case of death. Act, Sched. 1, par. 5.

Form 53.

Form 53A.

Form 53B.

application thereof to the court, or if no question arises as to who is a dependant or as to the amount payable to any dependant, or otherwise as to the application of the sum paid into court, but any of the persons interested in the said sum are absent or under disability, the amount paid into court shall, on application by or on behalf of the persons interested therein, be invested, applied, or otherwise dealt with by the court for the benefit of the persons interested therein in accordance with paragraph 5 of the first schedule to the Act.

- (b) *If any question arises as to who is a dependant or as to the amount payable to any dependant, or otherwise as to the application of the sum paid into court, such question shall be settled by the court by arbitration in accordance with these Rules; and the amount allotted to each dependant shall be invested, applied, or otherwise dealt with by the court for the benefit of the person entitled thereto in accordance with paragraph 5 of the first schedule to the Act.*

(9) *Where any question is settled by the court by arbitration in accordance with the last preceding paragraph, an application for the investment or application of any sum allotted to any person on such arbitration may be made at or immediately after the hearing of the arbitration.*

(10)—(a) *Where application is not so made, or in any other case coming within paragraph 5 of the first schedule to the Act, an application for the investment or application of any sum paid into court, or of the amount allotted to any person, shall be made in court on notice in writing, stating on whose behalf the application is made, and the order which the applicant asks, according to the form in the Appendix.*

(b) *The notice shall be filed with the registrar, and where the application is made by or on behalf of some only of the persons interested, notice thereof shall be served on all other parties interested, or on their solicitors, five clear days at least before the hearing of the application, unless the judge or registrar gives leave for shorter notice.*

(c) *On the hearing of the application witnesses may be orally examined in the same manner as on the hearing of an action.*

(d) *On the hearing of the application the judge may, after making or directing such inquiries as to the dependants and on such evidence of title and identity as he may think necessary, make such order under paragraph 5 of the first schedule to the Act and this rule as he may think fit.*

(e) *The provisions of the Act and these Rules as to the costs of an arbitration shall apply to any such application.*

(11) *An employer paying money into court under this rule shall not be liable to any costs incurred by any person interested in such money after the receipt of notice of payment into court; but the judge may, in his discretion, order such employer to pay the costs of any such person properly incurred before the receipt of such notice.*

(12) *Every order for the investment or application of money paid into court shall reserve liberty to the parties interested to apply to the court as they may be advised.*

(13) *Where any sum allotted to any person under paragraph 5 of the first schedule to the Act or this rule is ordered to be paid out to or applied for the benefit of the person entitled thereto, by weekly or other periodical payments, such payments may be made to the person entitled to receive the same either at the office*

of the registrar, or, on the written request of such person, by crossed cheque or Post Office order addressed to such person and forwarded by registered post letter, payment by post being in all cases at the cost and risk of the person requesting the same.

Payment into Court and Application of Weekly Payments payable to Person under Legal Disability. Schedule I., Paragraph 7.

57.—(1) An application under paragraph 7 of the first schedule to the Act for an order that a weekly payment payable under the Act to a person under any legal disability shall during the disability be paid into court may be made either by the person liable to make such payment, or by or on behalf of the person entitled to such payment.

Application for payment into court of weekly payment to person under legal disability. Act, Sched. 1, par. 7. Form 54.

(2) If the weekly payment is awarded by the judge, the application may be made at or immediately after the hearing of the arbitration.

(3) In any other case the application may be made in or out of court on notice in writing, which shall be served on the other party or his solicitor five clear days at least before the hearing of the application, unless the judge or registrar gives leave for shorter notice; and the provisions of Rule 48 shall apply to any such application.

(4) Where any weekly payment is ordered to be paid into court, the sums paid in shall be paid out by the registrar to or otherwise applied for the benefit of the person entitled thereto in such manner as the judge shall direct: and the provisions of the last preceding rule as to the payment out or application of sums by weekly or other periodical payments shall apply.

Application for Variation of Order under Schedule I., Paragraph 9.

58.—(1) An application for the variation of an order of the court under paragraph 9 of the first schedule to the Act may be made by any person interested.

Application for variation of order. Act, Sched. 1, par. 9. Form 55.

(2) The application shall be made in court on notice in writing, stating the circumstances under which the application is made, and the relief or order which the applicant claims.

(3) The notice shall be filed with the registrar, and notice thereof shall be served on all persons interested in accordance with Rule 48; and the provisions of that rule and of Rule 56 shall apply to the proceedings on such application.

Investment and Application of Lump Sum paid in Redemption of Weekly Payment. Schedule I., Paragraph 17.

59. Where pursuant to paragraph 17 of the first schedule to the Act a lump sum payable for the redemption of any weekly payment is ordered by a committee or an arbitrator, or by the judge, to be invested or applied for the benefit of the person entitled thereto, such sum shall be paid into court; and the provisions of paragraph 5 of the first schedule to the Act and of Rule 56 shall apply to the investment and application of such lump sum.

Investment and application of sums paid in redemption of weekly payments. Act, Sched. 1, par. 17.

Proceedings where Workman receiving Weekly Payment intends to cease to reside in United Kingdom. Schedule I., Paragraph 18.

60.—(1) Where a workman receiving a weekly payment intends to cease to reside in the United Kingdom, the following provisions shall have effect under paragraph 18 of the first schedule to the Act.

Where workman receiving

weekly pay-
ment intends
to cease to
reside in
United
Kingdom.
Act, Sched. 1,
par. 18.
Form 56A.

(2) The workman may apply to the registrar to refer to a medical referee the question whether the incapacity of the workman resulting from the injury is likely to be of a permanent nature.

(3)(m). *The application shall be made on notice in writing, according to the form in the Appendix, which shall be filed with the registrar, and shall be accompanied by a report of a medical practitioner selected by the workman, setting out the nature of the incapacity alleged to be the result of the injury; and a copy of the application and of the report shall be served on the employer or his solicitor in accordance with Rule 48; and the applicant shall file a copy of the application and of the report for the use of the medical referee.*

(4) *The employer may, on being served with notice of the application, require the workman to submit himself for examination by a medical practitioner provided and paid by the employer, in accordance with paragraph 14 of the first schedule to the Act; and if the employer requires the workman to submit himself for such examination he shall before or at the hearing of the application furnish the workman with a copy of the report of that practitioner as to the workman's condition, and file a copy of the report for the use of the medical referee.*

(4A) *The workman and the employer respectively may before or at the hearing of the application submit to the registrar such statements in writing as they may think fit, with copies of such statements for the use of the medical referee.*

Form 57A.

(5) *On the hearing of the application the registrar, on being satisfied that the applicant has a bonâ fide intention of ceasing to reside in the United Kingdom, shall make an order referring the question to a medical referee; and if he is not so satisfied, he may refuse to make an order, but in that case he shall, if so requested by the applicant, refer the matter to the judge, who may make such order or give such directions as he may think fit.*

Form 50.

(6) *If the registrar or the judge makes an order referring the question to a medical referee, he shall also make an order directing workman to submit himself for examination by the medical referee, subject to and in accordance with any regulations made by the Secretary of State; and the provisions of paragraphs 3 to 6 of Rule 54 shall with the necessary modifications apply.*

Form 51.

(6A) *The registrar shall with the order of reference forward to the medical referee copies of any statements submitted to him by either party.*

(7) *The medical referee shall forward his certificate in the matter to the registrar by registered post, specifying therein the nature of the incapacity of the workman resulting from the injury, and whether such incapacity is likely to be of a permanent nature; and the registrar shall thereupon proceed in accordance with paragraph 8 of Rule 54.*

(8) Where the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature, the registrar shall on application furnish the workman

- (a) with a copy of the certificate of the medical referee, sealed with the seal of the court and certified by the registrar in his own handwriting to be a true copy; and
- (b) with a copy of the award, memorandum, or certificate under which the weekly payment is payable, sealed with the seal of the court and certified by the registrar in his own handwriting to be a true copy; and

(m) Paragraphs (3) to (7) of this rule were annulled and replaced by those printed here by virtue of the Workmen's Compensation Rules, 1908.

- (c) with a certificate of identity according to the form in the Appendix; Form 58A. and
- (d) with a notice according to the form in the Appendix, annexing Forms 59, 60, thereto forms of certificate and declaration according to the forms in 61. the Appendix;

and shall procure from the workman a specimen of his signature, and file the same for reference.

(9) A workman who desires to have the weekly payments payable to him remitted to him while residing out of the United Kingdom shall at intervals of three months from the date to which such payments were last made submit himself to examination by a medical practitioner in the place where he is residing, and shall produce to him the copy of the certificate of the medical referee and the certificate of identity furnished under the last preceding paragraph, and shall obtain from him a certificate in the form in the Appendix that the incapacity of the workman resulting from the injury continues; and such certificate shall be verified by declaration by the medical practitioner, in the presence of the workman, before a person having authority to administer an oath. Form 60.

(10) The workman shall also make a declaration of identity according to the form in the Appendix before a person having authority to administer an oath, producing to such person the copy and certificate above mentioned, and the certificate of the medical practitioner by whom he has been examined. Form 61.

(11) The workman shall forward the certificate and declaration in the two last preceding paragraphs mentioned to the registrar, with a request, according to the form in the Appendix, for the transmission to him of the amount of the weekly payments due to him, specifying the place where and the manner in which the amount is to be remitted, which request shall be signed by the workman in his own handwriting. Form 62.

(12) On the receipt of the certificate, declaration, and request the registrar shall examine the same, and may if not satisfied that the same are in order return the same for correction.

(13) If the registrar is satisfied that the certificate, declaration, and request are in order, or when they are returned to him in order, he shall send to the employer a notice according to the form in the Appendix, requesting him to forward the amount due; and the employer shall thereupon forward the amount to the registrar, who shall remit the same, less any fees payable to the registrar and the costs of transmission, to the workman at the address and in the manner requested by him, such remittance being in all cases at the cost and risk of the workman. Form 63.

Costs.

61.—(1) Any costs of and incident to an arbitration and proceedings connected therewith directed by a committee or by an arbitrator (whether agreed on by the parties or appointed by the judge), or by the judge, to be paid by one party to another shall, in default of agreement between the parties as to the amount of such costs, be taxed according to such one of the scales of costs applicable to actions in the County Court as the committee, arbitrator, or judge shall direct; and in default of such direction shall be taxed according to the scale which would be applicable if the proceeding Costs. Act, Sched. 2, par. 7.

Order LIII.,
Rules 7, 8.

had been an action in the County Court: and the statutory provisions and rules for the time being in force as to the allowance and taxation of costs in such actions, and as to objections and review of taxation by the registrar, shall apply accordingly. Proceedings in an arbitration shall be within Order LIII., Rules 7 and 8, and the word "judge" in those rules shall include a committee and an arbitrator.

(2) Where the subject matter of an arbitration is not a capital sum, the committee, arbitrator, or judge shall determine what, for the purpose of the allowance and taxation of costs, shall be considered to be the amount of the subject matter of the arbitration; and in default of such determination the amount shall be fixed by the registrar by whom the costs are to be taxed, subject to review by the judge.

(3) The committee, arbitrator, or judge, in dealing with the question of costs, may take into consideration any offer of compensation proved to have been made on behalf of the employer.

(4) Where any workman is examined by a medical referee on a reference under paragraph 15 of the first schedule to the Act, and the certificate of the referee is used in any subsequent arbitration, any reasonable travelling and other expenses incurred by the workman in obtaining such certificate (if not otherwise provided for) may, by order of the committee, arbitrator, or judge, be allowed as costs in the arbitration.

(5) Where a workman is ordered to submit himself for examination by a medical referee appointed to report under paragraph 15 of the second schedule to the Act, any reasonable expenses incurred by such workman in travelling to attend on such referee for examination may, by order of the committee, arbitrator, or judge, be allowed as costs in the arbitration.

Taxation of
costs awarded
by committee
or arbitrator
agreed on by
parties.

62. Where any costs are awarded by a committee or an arbitrator agreed on by the parties, it shall be the duty of the registrar of the court in which a memorandum of the decision of the committee or arbitrator is recorded pursuant to paragraph 9 of the second schedule to the Act, on application made to him, to tax such costs, and to enter in the register the amount of such costs allowed on taxation; and such entry shall be deemed to be part of such memorandum, and shall be enforceable accordingly.

Review of Taxation by Judge.

Review of
taxation.

63.—(1) An application to the judge to review any taxation of costs shall be made on notice in writing, which shall be served on the opposite party two clear days at least before the hearing of the application, unless the judge or registrar gives leave for shorter notice.

(2) Such application shall be heard and determined upon the evidence which has been brought in before the registrar, and no further evidence shall be received on the hearing thereof unless the judge otherwise directs.

(3) The costs of and incident to the application shall be in the discretion of the judge.

(4) The result of such review shall be entered in the register.

As to
authority of
solicitor to
receive costs
payable by
adverse party.

64. Where any party to whom costs are awarded acts by a solicitor, such solicitor shall have the same authority to take out of court or receive any sum paid into court or payable in respect of such costs by the party against whom such costs are awarded as he would have if such costs were awarded in an action.

Costs of Solicitor or Agent under Schedule II., Paragraph 14.

65.—(1) The following provisions shall apply to an application under paragraph 14 of the second schedule to the Act for the determination of the amount of costs to be paid to the solicitor or agent of a person claiming compensation under the Act.

Application to determine costs payable to solicitor or agent.
Act, Sched. 2, par. 14.

(2) Where the sum awarded as compensation has been awarded by a committee or an arbitrator agreed on by the parties, the application shall be made to such committee or arbitrator.

(3) Where the sum awarded as compensation has been awarded by the judge or by an arbitrator appointed by him, the application may be made—

(a) to the judge or arbitrator at or immediately after the hearing of the arbitration: or

(b) at a subsequent date, but in that case it shall be made only to the judge.

(4) Where a sum has been agreed on as compensation, the application shall be made to the judge.

(5) An application made to the judge, other than an application under paragraph 3 (a) of this rule, shall be made in court on notice in writing in accordance with Rule 48. Form 64.

(6) Such notice shall be served on the person for whom the solicitor or agent acted in accordance with the said rule, and the provisions of the said rule shall apply to the proceedings on such application.

(7) On the hearing of any application under this rule, the committee, arbitrator, or judge may award costs to the solicitor or agent, and may make an order declaring such solicitor or agent to be entitled to recover such costs from the person for whom he acted, or to be entitled to a lien for such costs on any sum awarded as compensation to such person, or to be entitled to deduct such costs from any such sum, or may make such order or give such directions as may be just.

(8) Any costs awarded to a solicitor or agent on any such application shall, in default of agreement between the parties as to the amount of such costs, be taxed according to such one of the scales of costs applicable to actions in the County Court as the committee, arbitrator, or judge shall direct; and in default of such direction such costs shall be taxed according to the scale which would be applicable if the proceeding had been an action in the County Court: and the statutory provisions and rules for the time being in force as to the allowance and taxation of costs in such actions, and as to objections and review of taxation by the registrar, shall apply accordingly; and any taxation shall be subject to review by the judge according to Rule 63.

(9) Where the subject matter of the arbitration is not a capital sum, the committee, arbitrator, or judge shall determine what, for the purpose of the allowance and taxation of such costs, shall be considered to be the amount of the subject matter of the arbitration; and in default of such determination the amount shall be fixed by the registrar by whom the costs are to be taxed, subject to review by the judge.

66. Where an order is made by a committee, arbitrator, or judge awarding costs to a solicitor or agent, and declaring such solicitor or agent to be entitled to recover such costs from the person for whom he acted, or to be entitled to a lien for such costs on any sum awarded or agreed as compensa-

Provisions as to order declaring lien, &c.

tion, or to be entitled to deduct such costs from any such sum, the following provisions shall apply:—

- (a) The registrar shall, on application made to him, tax such costs.
- (b) A copy of the order, and, when the amount to which such solicitor or agent is entitled has been ascertained by taxation, a memorandum of such amount, shall, at the request and cost of the solicitor or agent, be issued by the registrar for service on the party liable to pay the sum awarded or agreed as compensation; and service thereof may be effected on such party in accordance with Rule 15.
- (c) A memorandum of such order, and when such amount has been ascertained a memorandum of such amount, shall be recorded in the register in which the memorandum or award under which the sum awarded as compensation is payable is recorded, and such last mentioned memorandum or award shall have effect subject to such order and memorandum.
- (d) The party liable to pay such compensation shall on demand pay to the solicitor or agent the amount to which he is entitled, but so that such party shall not be liable to pay any amount in excess of that which he is liable to pay for compensation, or to pay such amount by any other instalments than those by which he is liable to pay such compensation.
- (e) If the party liable to pay such compensation fails on demand to pay any amount which he is liable to pay to such solicitor or agent, the judge may, on application made to him on notice to such party in accordance with Rule 48, and on proof of the order having been served on and demand for payment made to such party, order such party to pay such sum; and in default of payment the judge may order execution to issue to levy such amount.
- (f) Payment made by or execution levied on the party liable to pay such compensation shall be a valid discharge to him, as against the party entitled to such compensation, to the amount paid or levied.
- (g) Where the sum awarded as compensation has been paid into court, the amount to which the solicitor or agent is entitled shall be paid to him out of such sum.

Execution.

Execution.
Form 65.

67.—(1) When a party liable to pay compensation or costs under any award, memorandum, or certificate has made default in payment of the amount awarded, or where payment is to be made by instalments, of any instalment, execution may issue against his goods without leave for the amount in payment of which he has made default.

(2) Where such sum is not payable into court, the party applying for execution shall satisfy the registrar, by affidavit or otherwise, as to the amount in payment of which default has been made.

Order XXV.,
Rule 11.

(3) Where the parties liable to pay compensation or costs under any award, memorandum, or certificate are a firm, the provisions of Order XXV., Rule 11, shall, with the necessary modifications, apply to execution under this rule.

Proceedings under Debtors Act, 1869, Section 5.

Proceedings
under
Debtors Act,
1869.
32 & 33 Vict.
c. 62, s. 5.

68.—(1) Where proceedings by way of judgment summons under section 5 of the Debtors Act, 1869, are taken against a party liable to pay compensation or costs under any award, memorandum, or certificate, who has made default in payment of the amount awarded, or, where payment is to be made by instalments, of any instalment, the County Court Rules for the time

being in force as to the committal of judgment debtors shall, with any necessary modifications, apply to such proceedings; Provided, that the court shall not alter the terms or mode of payment of any sum to become payable in future under any award, memorandum, or certificate, otherwise than by consent, or under paragraph 16 of the first schedule to the Act.

(2) Where the amount in payment of which default has been made is not payable into court, the party applying for a judgment summons shall satisfy the court, by affidavit or otherwise, as to the amount in payment of which default has been made.

(3) A judgment summons issued under this rule shall be according to the Form 66. form in the Appendix.

(4) Where the parties liable to pay compensation or costs are a firm, the provisions of the County Court Rules as to judgment summonses on a judgment or order against a firm shall, with the necessary modifications, apply to proceedings by way of judgment summons under this rule.

Other Proceedings for Enforcement of Award, Memorandum, or Certificate.

69. The County Court Rules for the time being in force as to proceedings for the enforcement of or the recovery of money due under judgments or orders of the County Court otherwise than by execution or committal shall, with the necessary modifications, apply to proceedings for the enforcement of or the recovery of money due under any award, memorandum, or certificate. Other proceedings for enforcement of award, &c.

Setting aside Award or Order improperly obtained.

70.—(1) Notwithstanding anything in these Rules contained, the statutory provisions and rules relating to new trials in actions in the County Court shall not apply to arbitrations under the Act. Rules as to new trials not to apply.

(2) Where the judge is satisfied—

- (a) that any award, or any order as to the application of any amount awarded or agreed upon as compensation, made by the judge or by an arbitrator appointed by him, has been obtained by fraud or other improper means; or
- (b) that any person has been included in any award or order as a dependant who is not in fact a dependant as defined by the Act; or
- (c) that any person who is in fact a dependant as defined by the Act has been omitted from any award or order,

When award or order may be set aside or varied.

the judge may set aside or vary the award or order, and may make such order (including an order as to any sum already paid under the award or order) as under the circumstances he may think just.

(3) An application to set aside or vary an award or order under this rule shall be made in court on notice in writing, and the provisions of Rule 48 shall apply to the proceedings on such application.

(4) An application to set aside or vary an award or order under this rule shall not be made after the expiration of six months from the date of the award or order, except by leave of the judge; and such leave shall not be granted unless the judge is satisfied that the failure to make the application within such period was occasioned by mistake, absence from the United Kingdom, or other reasonable cause.

Appeals.

Appeals.

Act, Sched. 2,
par. 4.

71. Appeals under paragraph 4 of the second schedule to the Act shall be had in accordance with the provisions of the Rules of the Supreme Court relating thereto (*n*).

Deposit of

order of

Court of

Appeal with

registrar, and

procedure

thereon.

72.—(1) When the Court of Appeal has given judgment on any appeal, any party may deposit the order of the Court of Appeal, or an office copy thereof, with the registrar: and the registrar shall file such order or copy, and shall transmit a copy thereof to the judge: and such order shall have the same effect as if it had been a decision of the judge.

(2) If such order has the effect of an award, decision, or order in the matter in favour of any party, such order shall be served and recorded, and may be proceeded on, in the same manner as if it had been an award, decision, or order of the judge.

(3) If such order be to the effect that an award be made or a decision given or order made in favour of any party, the judge shall make such award or give such decision or make such order accordingly.

(4) If such order directs or involves a re-hearing or further hearing of an arbitration or special case or other matter, the judge shall as soon as conveniently may be appoint a day and hour for such re-hearing or further hearing, and shall instruct the registrar to give notice thereof forthwith to the parties.

(5) Generally the judge shall make such award or give such decision or make such order and give such directions and take or direct to be taken such proceedings in the matter, as may be necessary to give effect to the order of the Court of Appeal.

*In what Court Proceedings may be taken.*In what court
proceedings
may be taken.
Act, Sched. 2,
par. 11.

73.—(1) Any matter which under the Act or these rules is to be done in a county court, or by to or before the judge or registrar of a county court, shall be done in the county court, or by to or before the judge or registrar of the county court,

(i) of the district in which all the parties concerned reside; or

(ii) if the parties concerned reside in different districts,

(a) of the district in which the accident out of which the matter arose occurred; or

(b) in the case of any such workman as in paragraph 1 of Rule 39 mentioned, of the district in which the workman was last employed in the employment to the nature of which the disease was due; or

(c) if the accident out of which the matter arose occurred at sea,

(1) of the district in which the ship shall be when the matter is to be done; or

(2) of the district comprising the port of registry of the ship; or

(3) of the district in which the workman or the dependants of the workman by whom or on whose behalf the matter is to be done, or some or one of them, resides or reside;

without prejudice to any transfer in manner provided by these Rules.

Detention of
ships.

(2) An application for an order for the detention of a ship may, subject to

(*n*) R. S. C.; O. LVIII. r. 20; and O. LIX. rr. 10, 12, 14, 16; printed at p. 853, *infra*.

the provisions of the rules for the time being in force under the Shipowners' Negligence (Remedies) Act, 1905 (*o*), be made to the judge of any court. 5 Edw. 7, c. 10. Act, sect. 11.

(3) Where proceedings by way of arbitration for the recovery of compensation are taken against the persons giving security pursuant to the Shipowners' Negligence (Remedies) Act, 1905 (*o*), or section 11 of the Act and Rules 37 and 38, such proceedings may be commenced Proceedings against persons giving security. 5 Edw. 7, c. 10. Act, sect. 11.

(i) in the county court of the district in which all the parties concerned reside; or

(ii) if the parties concerned reside in different districts,

(a) in the county court of the district in which the accident occurred; or

(b) if the accident occurred at sea,

(1) in the county court of the district in which the vessel is or was detained, or in which the order for detention was made or applied for; or

(2) in the county court of the district in which the workman or the dependants of the workman, or some or one of them, resides or reside;

without prejudice to any transfer in manner provided by these Rules.

Proceedings in one Court as to subject-matter of Award, Memorandum or Certificate recorded in another Court.

74. Where an award, or a memorandum under paragraph 9 of the second schedule to the Act, or a certificate under sub-section 4 of section 1 of the Act, has been recorded in any court, and any party desires to take any subsequent proceedings with reference to the subject-matter of such award, memorandum, or certificate in any other court, he shall before taking such proceedings obtain from the registrar of the first-mentioned court a certified copy of such award, memorandum, or certificate, and shall file the same in the court in which he desires to take proceedings, and the registrar of such last-mentioned court shall record the same as if it had been an award made in the court. Filing of certified copy of memorandum, &c. recorded in one court under Act, Sched. 2, par. 9, before taking subsequent proceedings in another court.

Transfer of Proceedings.

75. If the judge is satisfied by any party to any matter under the Act pending in his court that such matter can be more conveniently proceeded with in any other court in England, Scotland, or Ireland, he may order such matter to be transferred to such other court; and thereupon the registrar shall forthwith transmit by registered post to the registrar of the court to which such matter is transferred all original documents filed in such matter, and a certified copy of all records made with reference to such matter, and shall transfer to such last-mentioned court any money invested in his name as registrar: and thenceforth such matter shall be proceeded with in the court to which it is transferred in the same manner as if it had originally been commenced therein. The provisions of Order VIII., Rule 9, shall apply to any such transfer or application for a transfer. Transfer. Order VIII., Rule 9.

Transfer of Money paid into Court.

76.—(1) The provisions of the last preceding rule shall apply to the transfer of money paid into court from one court to another pursuant to paragraph 6 of the first schedule to the Act or otherwise, and to proceedings with respect to the application of such money. Transfer of money paid into court. Act, Sched. 1, par. 6.

(2) Where any money ordered to be transferred from one court to another is invested in the Post Office Savings Bank in the name of the registrar, such money shall be transferred into the name of the registrar of the court to which the money is ordered to be transferred in accordance with regulations to be made by the Postmaster-General with the consent of the Treasury: and where any money ordered to be transferred is not so invested it shall forthwith be so invested, and shall when invested be transferred in accordance with this rule.

Filing and Service of Documents and Notices.

77.—(1) Where any document is to be filed with the registrar under these Rules, that document may be so filed by delivering it at the office of the registrar, or by sending it by post addressed to the registrar at his office.

(2) Where any document is to be so filed, there shall be filed with the original document as many copies of the document as there are persons to whom copies of the document or any part thereof are to be sent by the registrar, and in addition a copy for the use of the judge or arbitrator.

(3) Where any document is under these Rules to be sent to any person by the registrar, that document may be sent by post.

(4) Any proceeding, document, or notice which is under these Rules to be served on any party may be served on such party by the opposite party or his solicitor; and where no special provision as to the mode of service is made by these Rules, any such proceeding, document, or notice may be served on such party, or where he acts by a solicitor, on his solicitor, in manner provided by sub-sections 3 and 4 of section 2 of the Act with reference to service of notice in respect of an injury; and the provisions of Order LIV., Rule 2, shall apply to the service of any such proceeding, document or notice.

Act, sect. 2,
sub-sects. 3, 4.
Order LIV.,
Rule 2.

Procedure Generally,

78. The provisions of Order XXIII., Rule 6, Order LIV., Rules 1 and 3 to 6, and Order VII., Rule 40, as to parties acting by solicitors, and as to substituted service and notice of (*sic*) lieu of service, shall apply to proceedings under the Act.

79.—(1) In any proceedings under the Act or these Rules arising out of an injury to a workman employed by or under the Crown, in which, if the employer were a private person, such employer would be a necessary party, the head of the department by in or under which the workman was employed, or, where the department is administered by a Board or by Commissioners, such Board or Commissioners shall be made a party under his or their official title as representing the Crown.

(2) In any such case any proceeding, document, or notice to be served on the head of the department, or on the Board or Commissioners, may be served on the permanent secretary to the department, subject to the provisions of these Rules as to service on parties acting by solicitors.

80. Where any matter or thing is not specially provided for under these Rules, the same procedure shall be followed and the same provisions shall apply, as far as practicable, as in a similar matter or thing under the County Courts Act, 1888, and the rules made in pursuance of that Act.

Provisions as to
parties acting by
solicitors, and
as to substituted
service and
notice in lieu of
service.
Order XXIII.,
Rule 6;
Order LIV.,
Rules 1, 3 to 6;
Order VII.,
Rule 40.
Proceedings
where Crown
a party.

Service of
documents,
&c.

Procedure,
where not
otherwise
provided for.

Record of Proceedings.—Special Register.

81. Proceedings under the Act before the judge or an arbitrator appointed by him shall be recorded in the books of the court in the manner in which other proceedings in the court are recorded; and the registrar shall also keep a special register for the purposes of the Act, in which he shall record—

Record of
proceedings
before judge
or arbitrator.
Special
register.
Form 67.

- (1) A memorandum of every application made to the judge for the settlement of any matter by arbitration ;
- (2) A memorandum of every appointment of an arbitrator to settle any such matter made by the judge ;
- (3) A memorandum of every proceeding taken in any arbitration before the judge or an arbitrator appointed by him prior to the award ;
- (4) A memorandum of every appointment of a medical referee by the judge or arbitrator, and of his report, and if a medical referee is summoned or requested to attend any proceeding in the arbitration, of such summons or request and attendance ;
- (5) A memorandum of every award made by the judge, or by an arbitrator appointed by him ;
- (6) A memorandum of every special case submitted to the judge, and of the proceedings and order thereon ;
- (7) A memorandum of every judgment given by the Court of Appeal on any appeal ;
- (8) A memorandum of every application to the court for the examination of an employer pursuant to Rule 35, paragraph 2, and of the order and proceedings thereon ;
- (9) A memorandum of every application to the court for the detention of a ship pursuant to section 11 of the Act and Rules 37 and 38, and of the order and subsequent proceedings thereon ;
- (10) A memorandum of every application to the judge for the appointment of an arbitrator in case of the death or refusal or inability to act of an arbitrator agreed on by the parties, and of the proceedings and order thereon ;
- (11) A copy of every memorandum sent to the registrar pursuant to paragraph 9 of the second schedule to the Act, and of the report (if any) of the medical referee annexed thereto, with a note stating whether such memorandum was recorded without further proof, or after inquiry, or by order of the judge ;
- (12) If such memorandum is recorded after inquiry, a memorandum of the inquiries made and of the result thereof ;
- (13) If such memorandum is recorded by order of the judge, a memorandum of the application to the judge, and of the order made thereon ;
- (14) If in the case of a memorandum of an agreement the registrar refers the matter to the judge, a memorandum of such reference, and of the directions of the judge, and the subsequent proceedings and order thereon ;
- (15) A memorandum of the result of every taxation or review of taxation of costs under any such memorandum, or under any award or order ;

- (16) A memorandum of every application to rectify the register in respect of any memorandum, and of the proceedings and order thereon ;
- (17) A memorandum of every application or report with reference to the removal of the record of a memorandum of an agreement from the register, and of the subsequent proceedings and order thereon ;
- (18) A memorandum of every application to the judge or arbitrator, under paragraph 14 of the second schedule to the Act, to determine the amount of costs to be paid to a solicitor or agent, and of the proceedings and order thereon, and of the result of any taxation or review of taxation under such order ;
- (19) A copy of every certificate under sub-section 1 of section 1 of the Act given by the court or sent to the registrar from any other court ;
- (20) A memorandum of every proceeding taken in the court for the enforcement of any award, order, memorandum, or certificate, and of the result of such proceeding ;
- (21) A memorandum of every application to refer a matter to a medical referee pursuant to paragraph 15 of the first schedule of the Act, and of the order and subsequent proceedings thereon ;
- (22) A memorandum of every application to the court for the suspension of the right to compensation or to take or prosecute any proceedings under the Act in relation to compensation, or of the right to weekly payments, and of the proceedings and order thereon ;
- (23) A memorandum of every sum paid into court pursuant to paragraph 5 of the first schedule to the Act, or under any award, memorandum, or certificate ;
- (24) A memorandum of every application made to the court with reference to any such sum, and of every order made on such application, and of the manner in which such sum is invested, applied, or disposed of ;
- (25) A memorandum of every application for the payment of any weekly payment into court, and of the proceedings and order thereon, and of the directions given as to the payment out or application of any such weekly payment ;
- (26) A memorandum of every application for variation of an order of the court as to the apportionment, investment, or application of any sum paid as compensation, and of the proceedings and order thereon ;
- (27) A memorandum of every application to refer a matter to a medical referee pursuant to paragraph 18 of the first schedule to the Act in the case of a workman intending to cease to reside in the United Kingdom, and of the order and the proceedings thereon ; and of every certificate and declaration of identity and request for payment received from such workman, and of the proceedings thereon ;
- (28) A memorandum of every application to set aside or vary an award or order under Rule 70, and of the proceedings and order thereon ;
- (29) A memorandum of every certified copy given pursuant to Rule 74, or a copy of every certified copy filed pursuant to that rule ;
- (30) A memorandum of every application for transfer, and of the order thereon, and the proceedings under such order ;

- (31) A memorandum of the transmission of documents and certified copies pursuant to paragraph 11 of Rule 37 or paragraphs (iii) or (iv) of Rule 38 ;
- (32) A memorandum of the transfer of any money paid into court to any other court ;
- (33) The like memorandum as to every matter transferred, or document or certified copy transmitted or money transferred to the court, as would have been recorded as to such matter, document, or money if it had been originally commenced and prosecuted in or transmitted to or paid into the court ;
- (34) A memorandum of any other matter which the judge shall order to be recorded with reference to any matter brought into or proceeding taken in the court under the Act.

References to Medical Referees.

82.—(1) Where a medical referee is summoned as an assessor, or any matter is referred to a medical referee, such referee shall be summoned or the matter shall be referred subject to and in accordance with any regulations made by the Secretary of State and the Treasury; and any such regulations shall so far as they affect the County Court or an arbitrator appointed by the judge of the County Court, and proceedings in the County Court or before any such arbitrator, be deemed to be Rules of Court, and shall have effect accordingly.

References to medical referees.

(2) In particular, if such regulations as in the preceding paragraph mentioned provide that an employer or a workman who desires any matter to be referred to a medical referee under paragraph (f) of sub-section 1 of section 8 of the Act shall apply to the registrar of a county court for the matter to be so referred, it shall be the duty of the registrar to refer the same in accordance with such regulations.

References under Act, s. 8 (1) (f).

(3) The registrar shall keep a record in the form prescribed by regulations made by the Secretary of State of all cases in which medical referees are summoned as assessors or matters are referred to medical referees, and shall forward a copy of the same to the Secretary of State at such times as may be prescribed by such regulations.

Record and returns as to references.

Matters, how distinguished.

83. Every matter brought into the court under the Act shall be intitled in the matter of the Act, and shall be distinguished by a separate number; and all documents filed and subsequent proceedings taken in the court with reference to such matter shall be intitled in like manner, and shall be distinguished by the same number; and the entries made in the special register with respect to each such matter shall be entered together, and shall be kept separate from the entries with respect to any other matter.

Matters, how distinguished.

Forms.

84. The forms in the Appendix, where applicable, and where they are not applicable forms of the like character, with such variations as the circumstances may require, may be used in proceedings under the Act.

Forms in Appendix or like forms may be used,

APPENDIX.

FORMS.

FORM 1.

Application for Arbitration by Injured Workman with respect to the Compensation payable to him.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an Arbitration between

A.B.,

of [address]

[description]

Applicant,

and

C.D. & Co., Limited,

of [address]

[description]

Respondent.

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A.B. a workman employed by C.D. & Co., Limited [or by a contractor with C.D. & Co., Limited, for the execution of work undertaken by them].

2. A question has [or questions have] arisen

[here state the questions, specifying only those which have arisen, e.g.]—

- (a) as to whether the said A.B. is a workman to whom the above-mentioned Act applies; or
- (b) as to the liability of the said C.D. & Co., Limited, to pay compensation under the above-mentioned Act in respect of the said injury; or
- (c) as to the amount [or duration] of the compensation payable by the said C.D. & Co., Limited, to the said A.B. under the above-mentioned Act in respect of the said injury.

[or as the case may be.]

3. An arbitration under the above-mentioned Act is hereby requested between the said A.B. and the said C.D. & Co., Limited for the settlement of the said question [or questions].

4. Particulars are hereto appended [or annexed].

PARTICULARS.

1. Name and address of applicant.
2. Name, place of business, and nature of business of respondent.
3. Nature of employment of applicant at time of accident, and whether employed under respondent or under a contractor with him. [*If employed under a contractor who is not a respondent, name and place of business of contractor to be stated.*]
4. Date and place of accident, nature of work on which workman was then engaged, and nature of accident and cause of injury.
5. Nature of injury.
6. Particulars of incapacity for work, whether total or partial, and estimated duration of incapacity.
7. Average weekly earnings during the 12 months previous to the injury, if the applicant has been so long employed under the employer by whom he was immediately employed, or if not, during any less period during which he has been so employed.
8. Average weekly amount which the applicant is earning or is able to earn in some suitable employment or business after the accident.
9. Payment, allowance or benefit received from employer during the period of incapacity.
10. Amount claimed as compensation.
11. Date of service of statutory notice of accident on respondent, and whether given before workman voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]
12. If notice not served, reason for omission to serve same.

STATUTORY LIABILITY OF EMPLOYERS.

The names and addresses of the applicant and his solicitor are :

Of the Applicant,

Of his Solicitor,

The name and address of the respondent to be served with this application are :

Dated this day of

(Signed)

Applicant.

[Or

Applicant's Solicitor.]

FORM 2.

Application for Arbitration by or on behalf of Dependants of Deceased Workman, with respect to the Compensation payable in respect of the Injury to such Dependants, where Death has resulted from an Injury to the Workman, and the Settlement of Questions as to who are Dependants, and the Apportionment and Application of such Compensation.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an Arbitration between

E.F.

of [address]

[description]

Applicant,

and

C.D. & Co., Limited,

of [address]

[description]

and

G.H.

of [address]

[description]

Respondents.

[or as the case may be ; see Rule 4.]

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A.B. , late of , deceased, a workman employed by C.D. & Co., Limited, [or by a contractor with C.D. & Co., Limited, for the execution of work undertaken by them] and on the day of the death of the said A.B. resulted from the injury.

2. A question has [*or questions have*] arisen

[*here state the questions, specifying only those which have arisen, e.g.*]—

- (a) as to whether the said A.B. was a workman to whom the above-mentioned Act applied; *or*
- (b) as to the liability of the said C.D. & Co., Limited, to pay compensation under the above-mentioned Act to the dependants of the said A.B. in respect of the injury caused to them by the death of the said A.B. ; *or*
- (c) as to the amount of compensation payable by the said C.D. & Co., Limited, to the dependants of the said A.B. under the above-mentioned Act in respect of the injury caused to them by the death of the said A.B. ; *or*
- (d) as to who are dependants of the said A.B. within the meaning of the above-mentioned Act; *or*
- (e) as to the apportionment and application of the compensation payable by the said C.D. & Co., Limited, to the dependants of the said A.B. in respect of the injury caused to them by the death of the said A.B.

[*or as the case may be.*]

3. An arbitration under the above-mentioned Act is hereby requested between E.F. , the legal personal representative of the said A.B. , acting on behalf of the dependants of the said A.B. [*or between E. F. , a dependant of the said A. B.] and the said C. D. & Co., Limited, and G. H. who claims or may be entitled to claim to be a dependant of the said A. B. ,*

[*or as the case may be; see Rule 4*]

for the settlement of the said question [*or questions*].

4. Particulars are hereto appended [*or annexed*].

PARTICULARS.

1. Name and late address of deceased workman.

2. Name, place of business, and nature of business of respondent from whom compensation is claimed.

3. Nature of employment of deceased at time of accident, and whether employed under respondent or under a contractor with him. [*If employed under a contractor who is not a respondent, name and place of business of contractor to be stated.*]

4. Date and place of accident, nature of work on which deceased was then engaged, and nature of accident and cause of injury.

PARTICULARS—*continued*.

5. Nature of injury to deceased, and date of death.

6. Earnings of deceased during the 3 years next preceding the injury, if he had been so long in the employment of the employer by whom he was immediately employed, or if the period of his employment had been less than the said 3 years, particulars of his average weekly earnings during the period of his actual employment under the said employer.

7. Amount of weekly payments (if any) made to deceased under the Act, and of any lump sum paid in redemption thereof.

8. Name and address of applicant for arbitration.

9. Character in which applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased or as a dependant, and if as a dependant, particulars showing how he is so.

10. Particulars as to dependants of deceased by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and their relationship to the deceased, and if infants, their respective ages, and stating whether they were wholly or partially dependent on the earnings of the deceased at the time of his death.

11. Particulars as to any persons claiming or who may be entitled to claim to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, and descriptions and occupations (if any).

12. Particulars of amount claimed as compensation, and of the manner in which the applicant claims to have such amount apportioned and applied.

PARTICULARS—*continued*.

13. Date of service of statutory notice of accident on respondent from whom compensation is claimed, and whether given before deceased voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]

14. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are :

Of the Applicant,

Of his Solicitor,

The names and addresses of the respondents to be served with this application are :

C.D. & Co., Limited.

G.H.,

Dated this day of

(Signed)

Applicant.

[Or

Applicant's Solicitor.]

FORM 3.

Application for Arbitration as to who are Dependants, or as to the Amount payable to each Dependant, where the total amount Payable as Compensation to the Dependants of a Deceased Workman has been agreed or ascertained.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an Arbitration between

E.F.,

of [address]
[description]

Applicant,

and

C.D. & Co., Limited,

of [address]
[description]

and

G.H.,

of [address]
[description]

J.K.,

of [address]
[description]

and

L.M.,

of [address]
[description]

Respondents.

[or as the case may be ; see Rule 5.]

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A.B. , late of , deceased, a workman employed by C.D. & Co., Limited, [or by , a contractor with C.D. & Co., Limited, for the execution of work undertaken by them.] and on the day of the death of the said A.B. resulted from the injury.

2. The amount of compensation payable by the said C.D. & Co., Limited, to the dependants of the said A.B. under the above-mentioned Act in respect of the injury caused to them by the death of the said A.B. , has been agreed [or ascertained], but a question has [or questions have] arisen

[here state the questions, specifying only those which have arisen; e.g.]—

- (a) as to who are dependants of the said A.B. within the meaning of the above-mentioned Act; or
- (b) as to the apportionment and application of the compensation payable to the dependants of the said A.B.

[or as the case may be.]

3. An arbitration under the above-mentioned Act is hereby requested between E.F. , the legal personal representative of the said A.B. , acting on behalf of N.O. P.R. &c., dependants of the said A.B. [or between E.F. N.O. P.R. &c., dependants of the said A.B.], and the said C.D. & Co., Limited, and G.H. J.K. and L.M. , who are or claim or may be entitled to claim to be dependants of the said A.B.

[or as the case may be; see Rule 5.]

for the settlement of the said question [or questions].

4. Particulars are hereto appended [or annexed].

PARTICULARS.

1. Name and late address of deceased workman.

2. Name and place of business of employer by whom compensation has been paid or is payable.

3. Date of accident to deceased, and date of death.

4. Agreed or ascertained amount of compensation to be paid to dependants of deceased.

5. Particulars as to whether the compensation money is still payable by the employer or has been paid by him, and if so, to whom, and in whose hands it now is.

6. Character in which the applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased or as a dependant, and if as a dependant, particulars showing how he is so.

PARTICULARS—*continued.*

7. Particulars as to the dependants or persons claiming to be dependants by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and their relationship to the deceased, and if infants, their respective ages, and stating whether they were or claim to have been wholly or partially dependent on the earnings of the deceased at the time of his death.

8. The like particulars as to any dependants who are made respondents.

[NOTE.—*If there is a legal personal representative, and he is not the applicant, he must be made a respondent.*]

9. Particulars as to any persons claiming or who may be entitled to claim to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, descriptions, and occupations (if any).

10. Particulars of the manner in which the applicant claims to have the amount of compensation apportioned and applied.

The names and addresses of the applicant and his solicitor are

Of the Applicant,

Of his Solicitor,

The names and addresses of the respondents to be served with this application are :

C.D. & Co., Limited

G.H.

I.K.

L.M.

[*or as the case may be.*]

Dated this day of

(Signed)

Applicant.

[*Or*

Applicant's Solicitor.]

FORM 4.

Application for Arbitration with respect to the Compensation payable in respect of Expenses of Medical Attendance and Burial, where Deceased Workman leaves no Dependents.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an Arbitration between

E.F.,

of [address]

[description]

Applicant,

and

C.D. & Co., Limited,

of [address]

[description]

and

G.H.,

of [address]

[description]

Respondents.

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A.B. , late of , deceased, a workman employed by C.D. & Co., Limited, [or by , a contractor with C.D. & Co., Limited, for the execution of work undertaken by them.] and on the day of the death of the said A.B. resulted from the injury.

2. The said A.B. left no dependants within the meaning of the above-mentioned Act.

3. A question has [or questions have] arisen

[here state the questions, specifying only those which have arisen; e.g.]—

(a) as to whether the said A.B. was a workman to whom the above-mentioned Act applied; or

(b) as to the liability of the said C.D. & Co., Limited, to pay compensation under the above-mentioned Act in respect of the reasonable expenses of the medical attendance on and the burial of the said A.B. ; or

(c) as to the amount of compensation payable by the said C.D. & Co., Limited, under the above-mentioned Act in respect of the reasonable expenses of the medical attendance on and the burial of the said A.B. ; or

(d) as to the apportionment and application of the compensation payable by the said C.D. & Co., Limited, under the above-mentioned Act in respect of the reasonable expenses of the medical attendance on and the burial of the said A.B.

[or as the case may be.]

4. An arbitration under the above-mentioned Act is hereby requested between E.F. and the said C.D. & Co., Limited, and G.H. for the settlement of the said question [or questions].

5. Particulars are hereto appended [or annexed].

PARTICULARS.

1. Name and late address of deceased workman.

2. Name, place of business, and nature of business of respondent from whom compensation is claimed.

3. Nature of employment of deceased at the time of accident, and whether employed under respondent or under a contractor with him. [*If employed under a contractor who is not a respondent, name and place of business of contractor to be stated.*]

4. Date and place of accident, nature of work on which deceased was then engaged, and nature of accident and cause of injury.

5. Nature of injury to deceased, and date of death.

6. Name and address of applicant for arbitration.

7. Character in which applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased or as a person to whom expenses in respect of which compensation is payable are due; and if the latter, particulars must be given of the circumstances under which the expenses are claimed to be due to the applicant.

8. Particulars as to any other persons who claim that expenses in respect of which compensation is payable are due to them, and who are therefore made respondents, with their names and addresses.

9. Particulars of amount claimed as compensation, and of the manner in which the applicant desires such amount to be apportioned and applied.

10. Date of service of statutory notice of accident on respondent from whom compensation is claimed, and whether given before deceased voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]

11. If notice not served, reason for omission to serve same.

STATUTORY LIABILITY OF EMPLOYERS.

The names and addresses of the applicant and his solicitor are :

Of the Applicant,

Of his Solicitor,

The names and addresses of the respondents to be served with this application are :

C.D. & Co., Limited.

G.H.

Dated this day of .

(Signed)

Applicant.

[Or

Applicant's Solicitor.]

FORM 5.

*Application for Arbitration with respect to the Review, Termination,
Diminution, Increase, or Redemption of a Weekly Payment.*

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an arbitration between

C.D. & Co., Limited,

of [*address*]

[*description*]

Applicants,

and

A.B.,

of [*address*]

[*description*]

[*or as the case may be ; see Act, Sched. 1, pars. 16, 17.*]

An arbitration under the Workmen's Compensation Act, 1906, is hereby requested between C.D. & Co., Limited, and A.B.

[*or as the case may be ; see Act, Sched. 1, pars. 16, 17*]

with respect to the review and termination [*or diminution, increase, or redemption, as the case may be*] of the weekly payment payable to the said A.B. under the said Act in respect of personal injury caused to him by accident arising out of and in the course of his employment.

Particulars are hereto appended [*or annexed*].

PARTICULARS.

1. Name and address of injured workman.
2. Name and place of business of employer by whom compensation is payable.
3. Date and nature of accident.
4. Date of agreement, decision, award, or certificate fixing weekly payment, amount of such payment, and date from which it commenced.
5. Relief sought by applicant, whether termination, diminution, increase, or redemption.
6. Grounds on which termination, diminution, or increase is claimed.

The names and addresses of the applicants and their solicitors are:—

Of the Applicants,

Of their Solicitor,

The name and address of the respondent to be served with this application are:

Dated this day of .

(Signed)

Applicants.

[Or

Applicants' Solicitor.]

FORM 6.

Application for Arbitration by an Injured Master, Seaman, Apprentice or Pilot, with respect to the Compensation payable to him.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an Arbitration between

A.B.,

of [address]

[description]

Applicant,

The owners of the Ship “ ,” and

Respondents.

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A.B. , the master of

the ship “ ” [or a seaman [or an apprentice to the sea service or an apprentice in the sea fishing service] and a member of the crew of the ship “ ”] [or a pilot employed on the ship “ ”].

2. A question has [or questions have] arisen

[have state the questions, specifying only those which have arisen, e.g.]—

(a) as to whether the said A.B. is a workman within the meaning of the above-mentioned Act; or

(b) as to the liability of the owners of the said ship to pay compensation under the above-mentioned Act in respect of the said injury; or

(c) as to the amount [or duration] of the compensation payable by the owners of the said ship to the said A.B. under the above-mentioned Act in respect of the said injury.

[or as the case may be.]

3. An Arbitration under the above-mentioned Act is hereby requested between the said A.B. and the owners of the said ship for the settlement of the said question [or questions].

4. Particulars are hereto appended [or annexed].

PARTICULARS.

1. Name and address of applicant.

2. Name of ship of which applicant was master [or of the crew of which applicant was a member or on which applicant was employed as pilot] at time of accident, and port of registry.

3. Nature of employment at time of accident.

4. Date and place of accident, nature of work on which applicant was then engaged, and nature of accident and cause of injury.

5. Nature of injury.

6. Particulars of incapacity for work, whether total or partial, and estimated duration of incapacity.

7. Average weekly earnings during the 12 months previous to the injury, if the applicant has been so long employed under the same owners, or if not, during any less period during which he has been so employed.

8. Average weekly amount which the applicant is earning or is able to earn in some suitable employment or business after the accident.

PARTICULARS—*continued*.

9. Payment, allowance or benefit received from employer during the period of incapacity.

10. Amount claimed as compensation.

11. Date of service of statutory notice of accident, and whether given before applicant voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]

12. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are :

Of the Applicant,

Of his Solicitor,

The name and address of the person to be served with this application as representing the owners of the ship are :

[*State name and address of managing owner or manager, or of master of ship. See Rule 36 (6).*]

Dated this day of .

(Signed)

Applicant.

[Or

Applicant's Solicitor.]

FORM 7.

Application for Arbitration by or on behalf of Dependents of Deceased Master, Seaman, Apprentice, or Pilot.

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an Arbitration between

E.F.

of [address]

[description]

Applicant,

and

The owners of the ship “ ”

and

G.B.

of [address]

[description]

Respondents.

[*or as the case may be ; see Rule 4.*]

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A.B. , late of ,

STATUTORY LIABILITY OF EMPLOYERS.

deceased, the master of the ship “ ” [or a seaman or an apprentice to the sea service or an apprentice in the sea-fishing service] and a member of the crew of the ship “ ” [or a pilot employed on the ship “ ”], and on the day of the death of the said A.B. resulted from the injury.

[Or 1. The ship “ ” which left the port of on or about the day of , was lost with all hands on or about the day of [or was last heard of on or about the day of , and is believed to have been lost with all hands.]

When the said ship left the said port A.B. late of , was the master thereof [or a seaman or an apprentice to the sea service or an apprentice in the sea-fishing service] and a member of the crew of the said ship [or a pilot employed on the said ship].

2. A question has [or questions have] arisen

[here state the questions, specifying only those which have arisen ; e.g.]—

- (a) as to whether the said A.B. was a workman within the meaning of the above-mentioned Act ; or
- (b) as to the liability of the owners of the said ship to pay compensation under the above-mentioned Act to the dependants of the said A.B. in respect of the injury caused to them by the death of the said A.B. ; or
- (c) as to the amount of compensation payable by the owners of the said ship to the dependants of the said A.B. under the above-mentioned Act in respect of the injury caused to them by the death of the said A.B. ; or
- (d) as to who are dependants of the said A.B. within the meaning of the above-mentioned Act ; or
- (e) as to the apportionment and application of the compensation payable by the owners of the said ship to the dependants of the said A.B. in respect of the injury caused to them by the death of the said A.B.

[or as the case may be.]

3. An arbitration under the above-mentioned Act is hereby requested between E.F. , the legal personal representative of the said A.B. [or between E.F. , a dependant of the said A.B.] and the owners of the said ship, and G.B. , who claims or may be entitled to claim to be a dependant of the said A.B.

[or as the case may be ; see Rule 4.]

for the settlement of the said question [or questions].

4. Particulars are hereto appended [or annexed].

PARTICULARS.

1. Name and late address of master, seaman, apprentice, or pilot.

2. Name of ship of which deceased was master [or of the crew of which deceased was a member or on which deceased was employed as pilot] at time of accident or loss of ship, and port of registry.

PARTICULARS—*continued*.

3. Nature of employment at time of accident or loss of ship.

4. Date and place of accident, nature of work on which deceased was then engaged, and nature of accident and cause of injury [*or* date and place when and where ship was lost or is deemed to have been lost].

5. Nature of injury to deceased and date of death [*or* date when ship was lost or is deemed to have been lost].

6. Earnings of deceased during the 3 years next preceding the injury or date of loss, if he had been so long employed under the same owners, or if the period of his employment had been less than the said 3 years, particulars of his average weekly earnings during the period of actual employment under the said owners.

7. Amount of weekly payments (if any) made to deceased under the Act, and of any lump sum paid in redemption thereof.

8. Name and address of applicant for arbitration.

9. Character in which applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased or as a dependant, and if as a dependant, particulars showing how he is so.

10. Particulars as to the dependants of deceased by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and their relationship to the deceased, and if infants, their respective ages, and stating whether they were wholly or partially dependent on the earnings of the deceased at the time of his death.

11. Particulars as to any persons claiming or who may be entitled to claim to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, and descriptions and occupations (if any).

PARTICULARS—continued.

12. Particulars of amount claimed as compensation, and of the manner in which the applicant claims to have such amount apportioned and applied.

13. Date of service of statutory notice of accident, and whether given before deceased voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]

14. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are:

Of the Applicant,

Of his Solicitor,

The names and addresses of the respondents to be served with this application are:

As representing the owners of the ship

[*State name and address of managing owner or manager, or of master of ship. See Rule 36 (6).*]

and G.B.,

Dated this day of .

(Signed)

Applicant.

[*Or*

Applicant's Solicitor.]

FORM 8.

Application for Arbitration where Security has been given on behalf of the Owners of a Ship under Section 11.

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an Arbitration between

A.B.

of [*address*]

[*description*]

and

Applicant,

[*names and addresses of persons giving security*]

Respondents.

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A.B. , of ,

and the said A.B. claims that the owners of the ship " " are liable under the Workmen's Compensation Act, 1906, to pay compensation in respect of the said injury.

2. The respondents have given security to abide the event of any proceedings that may be instituted in respect of the said injury, and to pay such compensation and costs as may be awarded thereon.

3. A question has [*or* Questions have] arisen

[*here state the questions, specifying only those which have arisen, e.g.*] —

- (a) as to whether the said A.B. is a workman to whom the above-mentioned Act applies; *or*
- (b) as to the liability of the owners of the said ship to pay compensation under the above-mentioned Act in respect of the said injury; *or*
- (c) as to the amount [*or* duration] of the compensation payable to the said A.B. under the above-mentioned Act in respect of the said injury.

[*or as the case may be.*]

4. An arbitration under the above-mentioned Act is hereby requested between the said A.B. and the respondents for the settlement of the said question [*or* questions].

5. Particulars are hereto appended [*or* annexed].

PARTICULARS.

[*Here insert particulars of circumstances under which the application is made, and of the relief or order which the applicant claims, adapting the particulars in the preceding forms to the circumstances of the case.*]

The names and addresses, &c. [*as in Form 1.*]

NOTE.—*This form to be adapted as required to an application for arbitration as between the dependants of a deceased workman and the persons giving security.*

FORM 9.

Application for Arbitration by Workman disabled by or suspended on account of having contracted Industrial Disease coming within Section 8.

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an Arbitration between

A.B.

of [*address*]
[*description*]

Applicant,

and

C.D. & Co., Limited,

of [*address*]
[*description*]

Respondent.

1. On the day of Mr. , the certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district of [*or* Mr. , one of the medical referees appointed by the Secretary of State

for the purposes of the Workmen's Compensation Act, 1906,] certified that A.B. of was suffering from a disease coming within section 8 of the Workmen's Compensation Act, 1906, and was thereby disabled from earning full wages at the work at which he was employed.

[*Or* 1. On the day of A.B. of was in pursuance of special rules [*or* regulations] made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of his having contracted , a disease coming within section 8 of the Workmen's Compensation Act, 1906.]

2. The said A.B. alleges that the above-mentioned disease is due to the nature of his employment in [*describe employment*], and that he was last employed in such employment within the twelve months previous to the date of disablement or suspension by C.D. & Co., Limited, of .

3. A question has [*or* Questions have] arisen

[*here state the questions, specifying only those which have arisen, e.g.*]—

- (a) as to whether the said A.B. is a workman to whom the Workmen's Compensation Act, 1906, applies; *or*
- (b) as to the liability of the said C.D. & Co., Limited, to pay compensation under the Workmen's Compensation Act, 1906, in respect of the said disease [*or* suspension]; *or*
- (c) as to whether the said disease was in fact contracted whilst the said A.B. was in the employment of the said C.D. & Co., Limited, ; *or*
- (d) as to whether the said disease is due to the nature of the employment of the said A.B. under the said C.D. & Co., Limited, ; *or*
- (e) as to the amount [*or* duration] of the compensation payable by the said C.D. & Co., Limited, to the said A.B. under the Workmen's Compensation Act, 1906, in respect of the said disease.

[*or as the case may be.*]

4. An arbitration under the above-mentioned Act is hereby requested between the said A.B. and the said C.D. & Co., Limited, for the settlement of the said question [*or* questions].

5. Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and address of applicant.

2. Name, place of business, and nature of business of respondents.

3. Nature of employment of applicant under respondents to which the disease was due.

4. Nature of disease.

5. Date of disablement or suspension.

6. Name (*sic*) and addresses of all other employers by whom applicant was employed in the same employment during the 12 months previous to date of disablement or suspension.

PARTICULARS—*continued*.

7. Particulars of incapacity for work, whether total or partial, and estimated duration of incapacity.

8. Average weekly earnings during the 12 months previous to date of disablement or suspension, if the applicant has been so long employed under respondents, or if not, during any less period during which he has been so employed.

9. Average weekly amount which the applicant is earning or is able to earn in some suitable employment or business.

10. Payment, allowance, or benefit received from employer during period of incapacity.

11. Amount claimed as compensation.

12. Date of service of statutory notice of disablement or suspension on respondents. [*A copy of the notice to be annexed.*]

13. If notice not served, reason for omission to serve same.

The names and addresses, &c. [*as in Form 1*].

FORM 10.

Application for Arbitration by or on behalf of Dependents of Deceased Workman whose death has been caused by Industrial Disease.

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an Arbitration between

E.F.

of [address]
[description]

and

Applicant,

C.D. & Co., Limited,

of [address]
[description]

and

G.H.

of [address]
[description]

Respondents.

[*or as the case may be; see Rule 4.*]

1. On the day of Mr. the certifying surgeon under the Factory and Workshop Act, 1901, for the district of [*or* Mr. one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906,] certified that A.B. of was suffering from , a disease coming within section 8 of the Workmen's Compensation Act, 1906, and was thereby disabled from earning full wages at the work at which he was employed; and on the day of the said A.B. died, his death being caused by the said disease.

[*Or* 1. On the day of A.B. of was in pursuance of special rules [*or* regulations] made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of his having contracted , a disease coming within section 8 of the Workmen's Compensation Act, 1906, and on the day of the said A.B. died, his death being caused by the said disease.]

[*Or* 1. On the day A.B. late of died, his death being caused by , a disease coming within section 8 of the Workmen's Compensation Act, 1906.]

2. The applicant alleges that the above-mentioned disease was due to the nature of the employment of the said A.B. in [*describe employment*], and that he was last employed in such employment within the twelve months previous to his disablement or suspension [*or, if the workman died without having obtained a certificate of disablement, or was not at the time of his death in receipt of a weekly payment on account of disablement, within the twelve months previous to his death*] by C.D. & Co., Limited, of .

3. A question has [*or* Questions have] arisen

[*here state the questions, specifying only those which have arisen, e.g.*].—

- (a) as to whether the said A.B. was a workman to whom the Workmen's Compensation Act, 1906, applied; *or*
- (b) as to the liability of the said C.D. & Co., Limited, to pay compensation under the Workmen's Compensation Act, 1906, to the dependants of the said A.B. in respect of the injury caused to them by the death of the said A.B. ; *or*
- (c) as to whether the said disease was in fact contracted whilst the said A.B. was in the employment of the said C.D. & Co., Limited, ; *or*
- (d) as to whether the said disease was due to the nature of the employment of the said A.B. under the said C.D. & Co., Limited, ; *or*
- (e) as to whether the death of the said A.B. was in fact caused by the said disease; *or*
- (f) as to the amount of compensation payable by the said C.D. & Co., Limited, to the dependants of the said A.B. under the above-mentioned Act in respect of the injury caused to them by the death of the said A.B. ; *or*
- (g) as to who are dependants of the said A.B. within the meaning of the above-mentioned Act; *or*
- (h) as to the apportionment and application of the compensation payable by the said C.D. & Co., Limited, to the dependants of the said A.B. in respect of the injury caused to them by the death of the said A.B. .

[*or as the case may be.*]

4. An arbitration under the above-mentioned Act is hereby requested between E.F. , the legal personal representative of the said A.B. , acting on behalf of the dependants of the said A.B. [or between E.F. , a dependant of the said A.B. ,] and the said C.D. & Co., Limited, and G.H. , who claims or may be entitled to claim to be a dependant of the said A.B.

[or as the case may be; see Rule 4.]

for the settlement of the said question [or questions].

5. Particulars are hereto appended [or annexed].

PARTICULARS.

1. Name and late address of deceased workman.

2. Name, place of business, and nature of business of respondents from whom compensation is claimed.

3. Nature of employment of deceased under respondents to which the disease was due.

4. Nature of disease.

5. Date of disablement, and date of death.

6. Earnings of deceased during the 3 years next preceding disablement, if he had been so long in the employment of the respondents, or if the period of his employment had been less than the said 3 years, particulars of his average weekly earnings during the period of his actual employment under the respondents.

7. Names and addresses of all other employers by whom deceased was employed in the same employment during the 12 months previous to the date of disablement.

8. Amount of weekly payments (if any) made to deceased under the Act, and of any lump sum paid in redemption thereof.

9. Name and address of applicant for arbitration.

10. Character in which applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased or as a dependant, and if as a dependant, particulars showing how he is so.

PARTICULARS—*continued.*

11. Particulars as to dependants of deceased by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and their relationship to the deceased, and if infants, their respective ages, and stating whether they were wholly or partially dependent on the earnings of the deceased at the time of his death.

12. Particulars as to any persons claiming or who may be entitled to claim to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, and descriptions and occupations (if any).

13. Particulars of amount claimed as compensation, and of the manner in which the applicant claims to have such amount apportioned and applied.

14. Date of service of statutory notice of disablement. [*A copy of the notice to be annexed.*]

15. If notice not served, reason for omission to serve same.

The names and addresses, &c. [*as in Form 2*].

FORM 11.

Application for Arbitration where rights of Employer against Insurers are transferred to Workman under Section 5.

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an Arbitration between

A.B.

of [*address*]

[*description*]

Applicant,

and

[*name and address of Insurers*]

Respondents.

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A.B. , a workman employed by , of [*name and address of employer*] [or by of , a contractor with [*name and address of employer*] for the execu-

tion of work undertaken by him], and the said A.B. claims that the said [employer] thereupon became liable to pay compensation under the Workmen's Compensation Act, 1906, to the said A.B. in respect of such injury.

[Or, where weekly payment has been settled,

1. Under an agreement [or a decision or an award or a certificate] recorded in this court on the day of a weekly payment of is payable by of [name and address of employer] to the above-mentioned A.B. as compensation for personal injury caused to the said A.B. by accident arising out of and in the course of his employment as a workman employed by the said [employer] [or by of, a contractor with the said [employer] for the execution of work undertaken by him].]

2. The respondents are insurers of the said [employer] in respect of his [or their] liability to pay such compensation.

3. The said [employer] has become a bankrupt [or made a composition or arrangement with his creditors [or, if the employer is a company, The said has commenced to be wound up]; and the rights of the said [employer] against the respondents as such insurers in respect of his [or their] liability to the said A.B. have by virtue of section 5 of the said Act been transferred to and vested in the said A.B.

4. A question has [or Questions have] arisen

[here state the questions, specifying only those which have arisen, e.g.]—

- (a) as to whether the said A.B. is a workman to whom the above-mentioned Act applies; or
 - (b) as to the liability of the said [employer] to pay compensation under the above-mentioned Act in respect of the said injury; or
 - (c) as to the liability of the respondents as such insurers as aforesaid to the said A.B.; or
 - (d) as to the amount [or duration] of the liability of the respondents as such insurers as aforesaid to the said A.B. :
- [or as the case may be.]

5. An arbitration under the above-mentioned Act is hereby requested between the said A.B. and the respondents for the settlement of the said question [or questions].

6. Particulars are hereto appended [or annexed].

PARTICULARS.

[Here insert particulars containing a concise statement of the circumstances under which the application is made, and of all matters necessary to be stated in order to bring the questions to be settled properly before the judge or arbitrator, and of the relief or order which the applicant claims, adapting the particulars given in the preceding forms to the circumstances of the case.]

The names and addresses of the applicant and his solicitor are :

Of the Applicant,
Of his Solicitor,

The name and address of the respondents to be served with this application are :

Dated this day of .

(Signed)

Applicant.

[Or

Applicant's Solicitor.]

NOTE.—This form to be adapted as required to an application for arbitration as between the dependants of a deceased workman and insurers.

STATUTORY LIABILITY OF EMPLOYERS.

FORM 12.

Notice to Applicant of Day upon which Arbitration will be proceeded with.

[Heading as in Request for Arbitration.]

TAKE NOTICE, that the judge of this Court [*or Mr.* the arbitrator appointed by the judge of this Court] will proceed with the arbitration in this matter at on the day of at the hour of o'clock in the noon.

Dated this day of .

To

Of

Registrar.

FORM 13.

Notice to Respondent of Day upon which Arbitration will be proceeded with.

[Heading as in Request for Arbitration.]

TAKE NOTICE, that the judge of this Court [*or Mr.* the arbitrator appointed by the judge of this Court] will proceed with the arbitration applied for in the request and particulars a sealed copy of which is served herewith at on the day of at the hour of o'clock in the noon: and that if you do not attend either in person or by your solicitor at the time and place above mentioned such order will be made and proceedings taken as the judge [*or arbitrator*] may think just and expedient.

And further take notice, that if you wish to disclaim any interest in the subject matter of the arbitration, or consider that the applicant's particulars are in any respect inaccurate or incomplete, or desire to bring any fact or document to the notice of the judge [*or arbitrator*], or intend to rely on any fact, or to deny (wholly or partially) your liability to pay compensation under the Act, you must file with me an answer, stating your name and address and the name and address of your solicitor (if any), and stating that you disclaim any interest in the subject matter of the arbitration, or stating in what respect the applicant's particulars are inaccurate or incomplete, or stating concisely any fact or document which you desire to bring to the notice of the judge [*or arbitrator*], or on which you intend to rely, or the grounds on and extent to which you deny liability to pay compensation.

Such answer, together with a copy thereof for the judge [*or arbitrator*], and a copy for the applicant and for each of the other respondents, must be filed with me ten clear days at least before the day of .

If no answer is filed, and subject to such answer, if any, the applicant's particulars and your liability to pay compensation will be taken to be admitted.

Dated this day of .

To

Of

Registrar.

FORM 14.

*Answer by Respondents.**[Not to be printed, but to be used as a Precedent.]**[Heading as in Request for Arbitration.]*

TAKE NOTICE—

That the respondent, G.H. disclaims any interest in the subject-matter of the above arbitration.

Or

That the respondents, C.D. & Co., Limited, state that the applicant's particulars filed in this matter are inaccurate or incomplete in the particulars hereto annexed.

Or

That the respondents, C.D. & Co., Limited, desire to bring to the notice of the judge [*or arbitrator*] the facts stated in the particulars hereto annexed.

Or

That the respondents, C.D. & Co., Limited, intend at the hearing of the arbitration to give evidence and rely on the facts stated in the particulars hereto annexed.

Or

That the respondents, C.D. & Co., Limited, deny their liability to pay compensation under the Act in respect of the injury to A.B. mentioned in the applicant's particulars, on the grounds stated in the particulars hereto annexed.

PARTICULARS.

1. *Particulars in which the particulars filed by the Applicant are inaccurate or incomplete.*

2. *Facts which the Respondents desire to bring to the notice of the Judge*
[or Arbitrator].

That the applicant A.B. refuses to submit himself to medical examination as required by [*or obstructs the medical examination required by*] the respondents, C.D. & Co., Limited, in accordance with paragraph 4 of the first schedule to the Act [*or refuses to submit himself for examination by a medical referee as ordered [or obstructs the examination by a medical referee ordered]* in accordance with paragraph 15 of the first schedule to the Act.]

[or as the case may be.]

3. *Facts which the Respondents, C.D. & Co., Limited, intend to give in evidence and rely on at the hearing of the Arbitration.*

That notice of the alleged accident [*or of death, disablement or suspension*] was not given to the respondents as required by the Act; *or*

That the claim for compensation was not made on the respondents within the time limited by the Act; *or*

That a scheme of compensation [*benefit or insurance*] for the workmen of the respondents, C.D. & Co., Limited, has been duly certified by the Registrar of Friendly Societies, and such certificate was in force at the date of the alleged accident, and the said C.D. & Co., Limited, contracted with the applicant A.B. [*or with the deceased workman*], by a contract which was in force at the date of the alleged accident, that the provisions of the said scheme should be substituted for the provisions of the Act, and the said C.D. & Co., Limited, are consequently liable only in accordance with the said scheme.

[*or as the case may be.*]

4. *Grounds on which the Respondents deny their Liability to pay Compensation.*

- (i.) That the applicant A.B. is [*or the deceased workman was*] not a workman to whom the Act applies; *or*
- (ii.) That the injury to the applicant [*or to the deceased workman*] was not caused by accident arising out of and in the course of his employment; *or*
- (iii.) That the injury to the applicant [*or to the deceased workman*] was attributable to the serious and wilful misconduct of the applicant [*or of the deceased workman*], and did not result in death or serious and permanent disablement; *or*
- (iv.) That at the time of the alleged accident the applicant [*or the deceased workman*] was not immediately employed by the respondents, but was employed by of , a contractor with the respondents for the execution by or under such contractor of work undertaken by the respondents, and the accident occurred elsewhere than on, in, or about premises on which the respondents had undertaken to execute the work or which were otherwise under the control or management of the respondents; *or*
- (v.) That the injury to the applicant [*or to the deceased workman*] was caused under circumstances creating a legal liability in a person other than the respondents, to wit, [*name and address of such person*] to pay damages in respect thereof, and the applicant [*or the deceased workman*] has taken proceedings against that person and has recovered damages from him; *or*
in case of industrial disease,
- (vi.) That the applicant [*or the deceased workman*] at the time of entering the employment of the respondents wilfully and falsely represented himself in writing as not having previously suffered from the disease mentioned in the applicant's particulars; *or*
- (vii.) That the disease mentioned in the applicant's particulars was not contracted whilst the applicant [*or the deceased workman*] was in the employment of the respondents; *or*

(viii.) That the disease mentioned in the applicant's particulars was not due to the nature of the employment in which the applicant [*or the deceased workman*] was employed by the respondents :

[*or as the case may be.*]

And further take notice, that the names and addresses of the said respondents and their solicitors are :

of the Respondents,
C.D. & Co., Limited,
of their Solicitors,

Dated this day of .

(Signed)

Solicitors for the Respondents.
C.D. & Co., Limited.

To the Registrar of the Court, and

To the Applicant, A.B., and

To the Respondents

[*if any, naming them*].

FORM 15.

Notice by Respondent admitting Liability, and submitting to an Award for Payment of a Weekly Sum, or paying Money into Court.

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the respondents, C.D. & Co., Limited, admit their liability to pay compensation in the above-mentioned matter.

And they hereby submit to an award for payment by them to the applicant, A.B. of the weekly sum of such weekly payment to commence as from the day of and to continue during the total or partial incapacity of the said A.B. for work, or until the same shall be ended, diminished, increased, or redeemed in accordance with the provisions of the above-mentioned Act.

And for payment by them to the applicant forthwith after the award of the amount of such weekly payments calculated from the day of until the first Saturday [*or other usual pay day*] after the date of the award, and for the payment thereafter of the said sum of to the applicant on Saturday [*or other usual pay day*] in every week.

[*Or, And the said C.D. & Co., Limited, herewith pay into Court the sum of £ in satisfaction of such liability.*]

Dated this day of .

(Signed)

Solicitors for the Respondents,
C.D. & Co., Limited.

To the Registrar of the Court, and

To the Applicant A.B., and

To the Respondents

[*if any, naming them*].

STATUTORY LIABILITY OF EMPLOYERS.

FORM 16.

*Notice of Filing of Submission to an Award.**[Heading as in Request for Arbitration.]*

TAKE NOTICE—

That the respondents, C.D. & Co., Limited, have this day filed with me a notice (copy of which is sent herewith) that they admit their liability to pay compensation in the above-mentioned matter, and submit to an award for payment by them to you of the weekly sum of .

If you elect to accept such weekly sum in satisfaction of your claim, you must send to the registrar of this Court, and to the said C.D. & Co., Limited, a written notice forthwith by post, or leave such notice at the office of the registrar, and at the residence or place of business of the said C.D. & Co., Limited.

If you send such notice, the judge of this Court will, on application made to him, make an award directing payment of such weekly sum to you, and you will be liable to no further costs.

In default of such notice, the arbitration will be proceeded with; and if no greater weekly payment is awarded to you, you will be liable to be ordered to pay the costs incurred by the respondents subsequent to the receipt by you of this notice.

Dated this day of .

Registrar.

To the Applicant, A.B.

FORM 17.

*Notice of Payment into Court.**[Heading as in Request for Arbitration.]*

TAKE NOTICE—

That the respondents, C.D. & Co., Limited, have this day filed with me a notice that they admit their liability to pay compensation in the above-mentioned matter, and they have paid into Court the sum of £ in satisfaction of such liability.

If you are willing to accept the sum so paid into Court in satisfaction of the compensation payable in the above-mentioned matter, you must send to the registrar of this Court, and to the said C.D. & Co., Limited, and to the other respondents [*or, where this notice is sent to a respondent, to the applicant and the other respondents*], a written notice forthwith by post, or leave such notice at the office of the registrar, and at the residence or place of business of the said C.D. & Co., Limited, and at the residence or place of business of each of the other respondents [*or of the applicant and each of the other respondents*].

If you and all the other respondents [*or If you and the applicant and all the other respondents*] send such notice, and agree as to the apportionment

and application of the said sum of £ , the judge of this Court will on application made to him, make an award for such apportionment and application, and you will be liable to no further costs.

If you and all the other respondents [*or* If you and the applicant and all the other respondents] send such notice, but do not agree as to the apportionment and application of the said sum of £ , the arbitration will be proceeded with as between you and such other respondents [*or* as between the applicant and yourself and such other respondents].

In default of such notice being sent by you and all the other respondents [*or* by the applicant and yourself and all the other respondents], the arbitration will be proceeded with; and if no greater amount than the said sum of £ is awarded as compensation, the parties who do not send such notice will be liable to be ordered to pay the costs incurred by the respondents, C.D. & Co., Limited, subsequent to the receipt by such parties of this notice, and also any costs incurred subsequent to the receipt of this notice by any parties who send notice of their willingness to accept the said sum of £ in satisfaction of the compensation payable in the above-mentioned matter.

Dated this day of .

Registrar.

To the Applicant, A.B.,

[*or* To the Respondent, G.H.]

[*or as the case may be*].

FORM 18.

Notice of Acceptance of Weekly Sum offered, or of willingness to accept Sum paid into Court.

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the applicant, A.B. accepts the weekly sum offered by the respondents, C.D. & Co., Limited, in satisfaction of his claim in the above-mentioned matter [*or* that the applicant, E.F. [*or* the respondent, G.H.] is willing to accept the sum of £ paid into Court by the respondents, C.D. & Co., Limited, in satisfaction of the compensation payable in the above-mentioned matter].

But the applicant [*or* the said respondent, G.H.] will apply to the judge to include in his award an order directing the said respondents, C.D. & Co., Limited, to pay the costs properly incurred by the applicant [*or* the said respondent, G.H.] before the receipt of notice of the offer of the said weekly sum [*or* of notice of payment of the said sum of £ into Court].

Dated this day of .

(Signed)

Applicant.

[*Or*

To the Registrar of the Court, and

Respondent.]

To the Respondents, C.D. & Co., Limited, and

To the Applicant, A.B., and

To the Respondents

[*naming them*].

STATUTORY LIABILITY OF EMPLOYERS.

FORM 19.

*Application for Addition of Employer as Respondent under Section 8,
Sub-section (1), Paragraph (c), Proviso (ii).*

[Not to be printed, but to be used as a Precedent.]

[Heading as in Request for Arbitration.]

TAKE NOTICE—

That the respondents, C.D. & Co., Limited, allege that the disease mentioned in the applicant's particulars filed in this matter was in fact contracted while the applicant [*or* the deceased workman] was in the employment of of , and not whilst in the employment of the said C.D. & Co., Limited.

And the said C.D. & Co., Limited, hereby apply for an order that the said be joined as respondents in the above arbitration, and if necessary for an adjournment of the hearing of the arbitration.

Dated this day of .

(Signed) C.D. & Co., Limited.

By Secretary.

[*Or* Solicitors for the Respondents,
C.D. & Co., Limited.]

To the Registrar of the Court.

FORM 20.

Order adding Respondents.

[Heading as in Request for Arbitration.]

It is this day ordered, on the application of the respondents, C.D. & Co., Limited, that of be added as respondents to this arbitration [and that the hearing of this arbitration be adjourned to the day of at o'clock in the noon].

Dated this day of .

Registrar.

FORM 21.

Notice to Applicant and Original Respondents of Addition of Respondents.

[Heading as in Request for Arbitration.]

TAKE NOTICE—

That by order dated the day of , it was ordered on the application of the respondents, C.D. & Co., Limited, (a copy whereof is hereto annexed), that of be added as respondents to this arbitration [and that the hearing of this arbitration be adjourned to the day of at o'clock in the noon].

Dated this day of .

Registrar.

To the Applicant
and
The Respondents,
C.D. & Co., Limited.

FORM 22.

Notice to Parties who are added as Respondents.

[Heading as in Request for Arbitration.]

To Messrs. of [address and description].

TAKE NOTICE—

That by an order of this Court, dated the day of , a copy of which order is hereunto annexed, together with a copy of the request and particulars filed by the applicant in this matter, and a copy of the application on which the said order was made, you were ordered to be added as a respondent in the above arbitration.

And further take notice, that the hearing of the above arbitration has been appointed for the day of at o'clock in the noon, and that if you do not attend, either in person or by your solicitor, at the court-house at upon the day and at the hour above-mentioned, such order will be made and proceedings taken as the judge [or arbitrator] may think just and expedient.

And further take notice, that if you wish to disclaim any interest in the subject-matter of the arbitration, or consider that the applicant's particulars are in any respect inaccurate or incomplete, or desire to bring any fact or document to the notice of the judge [or arbitrator], or intend to rely on any fact, or to deny (wholly or partially) your liability to pay compensation under the Act, you must file with me an answer, stating your name and address and the name and address of your solicitor (if any), and stating that you disclaim any interest in the subject-matter of the arbitration, or stating in what respect the applicant's particulars are inaccurate or incomplete, or stating concisely any fact or document which you desire to bring to the notice of the judge [or arbitrator], or on which you intend to rely, or the grounds on and extent to which you deny liability to pay compensation.

STATUTORY LIABILITY OF EMPLOYERS.

Such answer, together with a copy thereof for the judge [*or arbitrator*], and a copy for the applicant and for each of the other respondents, must be filed with me ten clear days at least before the day of .

If no answer is filed, and subject to such answer, if any, the applicant's particulars and your liability to pay compensation will be taken to be admitted.

Dated this day of .

To

Of

Registrar.

FORM 23.

Notice by Respondent to Third Parties.

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Request for Arbitration.*]

To Mr. , of [*address and description*].

TAKE NOTICE—

That A.B. of, &c. has filed a request for arbitration (a copy whereof is hereto annexed) as to the amount of compensation payable by the respondents, C.D. & Co., Limited, to the said A.B. in respect of personal injury caused to the said A.B. by accident arising out of and in the course of his employment.

[*Or that E.F. of has filed a request for arbitration (a copy whereof is hereto annexed) with respect to the compensation payable to the dependants of A.B. deceased, in respect of the injury caused to the said dependants by the death of the said A.B. which resulted from injury caused to the said A.B. by accident arising out of and in the course of his employment.*]

[*or as the case may be; see forms of request for arbitration.*]

The respondents, C.D. & Co., Limited, claim to be indemnified by you against their liability to pay such compensation, on the ground that at the time of the injury in respect of which compensation is claimed the said A.B. was not immediately employed by the said C.D. & Co., Limited,

but was employed by you in the execution of work undertaken by the said C.D. & Co., Limited, in respect of which the said C.D. & Co., Limited, had contracted with you for the execution thereof by or under you.

[*Or on the ground that the injury for which compensation is claimed was caused under circumstances creating a legal liability on your part [add, if so, as the persons who have given security in respect of the liability of the owners of the ship " "] to pay damages in respect thereof.*]

[*or as the case may be.*]

[Or, in case of industrial disease, The respondents, C.D. & Co., Limited, claim to be entitled to contribution from you in respect of the compensation claimed from them, on the ground that the disease mentioned in the applicant's particulars was of such a nature as to be contracted by a gradual process, and that the said A.B. was employed by you during the 12 months previous to the date of disablement or suspension in the employment to the nature of which the disease was due.]

And take notice, that if you wish to dispute the applicant's claim as against the respondents, C.D. & Co., Limited, or your liability to the said respondents, you must appear before the judge [or arbitrator] at the time and place mentioned in the notice, a copy of which is hereunto annexed.

In default of your so appearing you will be deemed to admit the validity of any award made in the said arbitration as to any matter which the judge [or arbitrator] has jurisdiction to decide in such arbitration as between the applicant and the respondents, C.D. & Co., Limited, whether such award is made by consent or otherwise, and your own liability to indemnify the said C.D. & Co., Limited, [or to contribute as above mentioned].

Dated this day of .

(Signed) C.D. & Co., Limited.

To _____ By _____

Of _____ Secretary.

 $\lceil Or$

Solicitors for the Respondents,
C.D. & Co., Limited.]

FORM 24.

Award.

[NOTE.—These forms are intended for use in ordinary cases only. The award in any special case must be settled under Rule 28, in accordance with the directions given by the Judge or Arbitrator.]

(i.) *In Case of Application by Workman.*

[Heading as in Request for Arbitration.]

Having duly considered the matters submitted to me, I do hereby make my award as follows:—

[Here insert any introductory recitals of findings on which the award is made which the judge or arbitrator may direct.]

STATUTORY LIABILITY OF EMPLOYERS.

1. I order that the respondents, C.D. & Co., Limited, do pay to the applicant, A.B., the weekly sum of _____ as compensation for personal injury caused to the said A.B. on the _____ day of _____, by accident arising out of and in the course of his employment as a workman employed by the said respondents, such weekly payment to commence as from the _____ day of _____, and to continue during the total or partial incapacity of the said A.B. _____ for work, or until the same shall be ended, diminished, increased, or redeemed in accordance with the provisions of the above-mentioned Act.

2. And I order that the said C.D. & Co. do forthwith pay to the said A.B. the sum of £ _____ being the amount of such weekly payments calculated from the _____ day of _____ until the _____ day of _____⁽¹⁾ and do thereafter pay the said sum of _____ to the said A.B. on Saturday⁽²⁾ in every week.

⁽¹⁾ First Saturday or other usual pay day after date of award.

⁽²⁾ Or other usual pay day.

4. And I order that the said C.D. & Co. do pay to the registrar of this Court, for the use of the applicant, his costs of and incident to this arbitration, such costs, in default of agreement between the parties as to the amount thereof, to be taxed by the registrar under column _____ of the scales of costs in use in the County Courts, and to be paid by the said C.D. & Co. to the registrar within 14 days from the date of the certificate of the result of such taxation.

Dated this _____ day of _____.

Judge [*or* Arbitrator].

(ii.) *In Case of Application by Dependants.*

[*Heading as in Request for Arbitration.*]

Having duly considered the matter submitted to me, I do hereby make my award as follows:—

[*Here insert any introductory recitals of findings on which the award is made which the judge or arbitrator may direct.*]

1. I order that the respondents, C.D. & Co., Limited, do pay the sum of £ _____ to the dependants of A.B., late of _____, deceased, as compensation for the injury resulting to such dependants from the death of the said A.B., which took place on the _____ day of _____ from injury caused to the said A.B. on the _____ day of _____ by accident arising out of and in the course of his employment as a workman employed by the said respondents.

2. And I declare that the persons hereinafter named are entitled to share in such compensation as dependants of the said A.B., , that is to say, J.B., the widow of the said A.B., and ⁽¹⁾ ,

⁽¹⁾ Name the other persons.

3. [*Add, if so found.*] And I declare that the respondent G.H., , the of the said A.B., , is not entitled to share in such compensation as a dependant of the said A.B.

4. And I order that the said sum of £ be apportioned between the said J.B., and ⁽¹⁾

in the proportions following, that is to say:—

I apportion the sum of £ to or for the benefit of the said J.B., and the sum of £ to or for the benefit of the said ⁽²⁾ ,

⁽²⁾ Specify the persons entitled and the sums apportioned them.

5. And I order that the said C.D. & Co., Limited, do pay the said sum of £ to the registrar of this Court within 14 days from the date of this award.

6. And I order that on payment to the registrar of the said sum of £ , the registrar do forthwith pay to the said J.B. the sum of £ hereby apportioned to her, [*or* the sum of £ out of the sum of £ hereby apportioned to her, and that the balance of the last-mentioned sum (less the fee for the investment thereof) be invested by the registrar in his name in the Post Office Savings Bank for the benefit of the said J.B., and that out of the sum so invested and the accruing interest thereof the registrar do from time to time until further order pay to the said J.B. the weekly [*or* fortnightly] sum of £ , the first payment to be made on the day of].

7. And I order that on payment to the registrar of the said sum of £ the sums of £ and £ hereby apportioned to or for the benefit of the said respectively (less the fees for the investment thereof) be invested by the registrar in his name in the Post Office Savings Bank for the benefit of the said and respectively, and that interest arising from such investments be from time to time until further order paid to the said J.B. to be by her applied for the maintenance, education, or benefit of the said and respectively.

8. And I order that the said J.B. and the said

or any of them be at liberty to apply to the Judge from time to time as they may be advised for any further or other order as to the application of any of the said sums so ordered to be invested and the accruing interest thereof.

9. And I order that the said C.D. & Co., Limited, do pay to the registrar of this Court, for the use of the applicants, their costs of and incident to this arbitration, such costs, in default of agreement between the parties as to the amount thereof, to be taxed by the registrar under

column of the scales of costs in use in the County Courts, and to be paid by the said C.D. & Co., Limited, to the registrar within 14 days from the date of the certificate of the result of such taxation.

[Add directions (if any given) as to costs occasioned by claim of person claiming as a dependant whose claim is disallowed.]

Dated this day of .

Judge [*or Arbitrator*].

(iii.) *In case of Application by Person to whom expenses of Medical Attendance or Burial are due.*

[Heading as in Request for Arbitration.]

Having duly considered the matters submitted to me, I do hereby make my award as follows:—

[Leave space for any introductory recitals of findings on which the award is made which the judge or arbitrator may direct.]

1. I order that the respondents, C.D. & Co., Limited, do pay the sum of £ for or towards the expenses of medical attendance on and the burial of A.B., late of , deceased, who died on the day of from injury caused on the day of by accident arising out of and in the course of the employment of the said A.B. as a workman employed by the said C.D. & Co., Limited.

2. And I declare that the persons hereinafter named are entitled to share in such compensation, that is to say:

The applicant, E.F., in respect of charges amounting to £ due to [*or payable by*] him for medical attendance on the said A.B. and the respondent, G.H. , in respect of charges amounting to £ due to him for the burial of the said A.B.

3. And I order that the respondents, C.D. & Co., Limited, do pay the said sum of £ to the registrar of this Court within 14 days from the date of this award, and that the said sum of £ be apportioned between and paid to the said E.F. and G.H. in proportion to the amounts due to them respectively as aforesaid.

4. And I order that the said C.D. & Co., Limited, do pay to the registrar of this Court for the use of the applicant, E.F., and the respondent, G.H., their respective costs of and incident to this arbitration, such costs, in default of agreement between the parties as to the amount thereof, to be taxed by the registrar under column of the scales of costs in use in the County Courts, and to be paid by the said C.D. & Co., Limited, to the registrar within 14 days from the date of the certificate of the result of such taxations.

Dated this day of .

Judge [*or Arbitrator*].

[Note.—The above forms will serve as guides for framing awards in other cases of arbitration.]

FORM 25.

¶ *Notice of Day upon which Special Case will be heard.*

In the County Court of holden at .

[*Heading as in Special Case.*]

TAKE NOTICE, that the judge of this Court will hear the special case stated in the above-named matter at a Court to be holden at on the day of at the hour of in the noon: and that if you do not attend in person or by your solicitor at the place and time above-mentioned, such order will be made and proceedings taken as the judge may think just.

You may obtain a copy of the case upon application at my office and upon prepayment of the costs of such copy.

Dated this day of .

Registrar.

To [*the Applicant and Respondents*].

FORM 26.

Application for Order for Detention of Ship.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

The Workmen's Compensation Act, 1906. Section 11.

The Ship " ."

Application is hereby made on behalf of of , who alleges that the owners of the ship " " which has been found in the port [*or river*] of [*or within three miles of the coast of England*], are liable as such owners to pay compensation under the Workmen's Compensation Act, 1906, in respect of personal injury by accident arising out of and in the course of his employment caused to of on the day of in the port [*or harbour*] of , and who claims compensation in respect of such injury, and alleges that none of the owners of the said ship reside in the United Kingdom,

for an order directed to an officer of Customs or other officer named by the judge, requiring him to detain the said ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation, and to pay such compensation and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law.

The grounds on which this application is made are set forth in the affidavit of filed herewith [*or will be given in evidence on the hearing of the application*].

Dated this day of .

(Signed)

[*Name and Address of Applicant or Applicant's Solicitor.*]

FORM 27.

Undertaking as to Damages.[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

The Workmen's Compensation Act, 1906. Section 11.

The Ship " ."

I, the undersigned , of , hereby undertake to abide by any order which may hereafter be made as to damages, in case any person affected by the order to be made on my application for the detention of the ship " " shall sustain any damages by reason of such order which I ought to pay.

Dated this day of .

(Signed)

[*Signature and Address of Applicant.*][*To be altered as required, if the undertaking is given by any person other than the applicant.*]

FORM 28.

Order for Detention of Ship.

In the County Court of holden at .

The Workmen's Compensation Act, 1906.

The Ship " ."

Whereas it is alleged that the owners of the ship " " are liable as such owners to pay compensation in respect of personal injury by accident arising out of and in the course of his employment caused to of in the port [*or harbour*] of :

And that the said ship has been found in the port [*or river*] of [*or within three miles of the coast of England*]:

And whereas it has been shown to me, on the application of of , who claims compensation in respect of such injury, that the owners of the said ship are probably liable as such to pay such compensation, and that none of the owners reside in the United Kingdom:

[And whereas the said has filed an undertaking to abide by any order which may hereafter be made as to damages, in case any person affected by this order shall sustain any damages by reason of this order which the said ought to pay:]

Now I do hereby issue this order directed to you, the Chief Officer of Customs at [*or other officer named by the judge*], requiring you to detain the said ship until such time as the owners, agent, master, or consignee thereof have paid compensation in respect of the said injury, or have given security in the sum of £ , to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation, and to pay such compensation and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law.

Dated this day of .

Judge.

To the Chief Officer of Customs at .
[*or other officer named by the judge.*]

FORM 29.

Bond by way of Security.[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

The Workmen's Compensation Act, 1906.

The Ship " ."

Whereas it is alleged that the owners of the ship " " are liable as such owners to pay compensation in respect of personal injury by accident arising out of and in the course of his employment caused to of in the port [*or harbour*] of :

And whereas the judge of this Court has issued an order directed to the Chief Officer of Customs at [*or other officer named by the judge*], requiring him to detain the said ship until such time as the owners, agent, master, or consignee thereof have paid compensation in respect of the said injury, or have given security in the sum of £ , to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation, and to pay such compensation and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law :

Now, therefore, we [*state names, addresses, and description of sureties*] jointly and severally submit ourselves to the jurisdiction of this Court, or of any other competent Court in England or Ireland in which any proceedings may be instituted in respect of the said injury, and consent that if the owners, agent, master, or consignee of the said ship shall not pay all such compensation and costs as may be awarded thereon execution may issue forthwith against us, our heirs, executors, and administrators, goods and chattels, for a sum not exceeding pounds.

[*Signatures of Sureties.*]

This bail bond was signed by the said
and
the sureties, the day of
19 .

Before me,

Registrar.

[*or Clerk to the Registrar nominated
to take affidavits.*]

FORM 30.

Order of Release.

In the County Court of holden at .

The Workmen's Compensation Act, 1906.

The Ship " ."

You are hereby authorised and directed to release the ship " " now under detention by virtue of an order made on the day of , upon the payment of all costs, charges and expenses attending the custody thereof.

Dated this day of .

Judge.

To the Chief Officer of Customs at .
[*or other officer named in the order for detention.*]

FORM 30A.

*Solicitor's Undertaking to give Security.**[Not to be printed, but to be used as a Precedent.]*

In the County Court of holden at .

The Workmen's Compensation Act, 1906.

The Ship " ."

Whereas it is alleged that the owners of the ship " " are liable as such owners to pay compensation in respect of personal injury by accident arising out of and in the course of his employment caused to of in the port [*or* harbour] of :

Now, therefore, I, L.M. , of [*address*] , solicitor for the owners [agent, master *or* consignee] of the said ship, hereby undertake within days from the date hereof to put in *or* give security in the sum of £ , to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation, and to pay such compensation and costs as may be awarded thereon.

Dated this day of .

(Signed) L.M.

FORM 31.

*Application for Order for Detention of Ship by Employer claiming Indemnity.**[Not to be printed, but to be used as a Precedent.]*

In the County Court of holden at .

The Shipowners' Negligence (Remedies) Act, 1905.

The Workmen's Compensation Act, 1906.

The Ship " ."

Application is hereby made on behalf of of , who alleges :—

1. That on the day of personal injury by accident arising out of and in the course of his employment was caused to of in the port [*or* harbour] of ; and

2. That the applicant, as the employer of the said has paid compensation [*or* has had a claim for compensation made on him] in respect of such injury under the Workmen's Compensation Act, 1906; and

3. That the applicant is [*or* will become] entitled to be indemnified under that Act by the owners of the ship " " on the ground that the said injury was caused by the said ship [*or* sustained on, in *or* about the said ship], in consequence of the wrongful act, neglect, or default of the owners of the said ship, or the master or officers or crew thereof, or of some other person in the employment of the owners of the said ship, or of some defect in the said ship or its apparel or equipment; and

4. That the said ship has been found in the port [*or* river] of [*or* within three miles of the coast of England]; and

5. That none of the owners of the said ship reside in the United Kingdom :

for an order directed to an officer of Customs or other officer named by the judge, requiring him to detain the said ship until such time as the owners, agent, master, or consignee thereof have indemnified the applicant or paid compensation in respect of the said injury, or have given security, to be approved by the judge, to abide the event of any proceedings that may be instituted in respect of the said injury or to recover such indemnity, and to pay such compensation, indemnity, and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law.

The grounds on which this application is made are set forth in the affidavit of filed herewith [*or will be given in evidence on the hearing of the application*].

Dated this day of .

(Signed)

[*Name and Address of Applicant or Applicant's Solicitor.*]

FORM 32.

Order for Detention of Ship on Application of Employer claiming Indemnity.

In the County Court of holden at .

The Shipowners' Negligence (Remedies) Act, 1905.

The Workmen's Compensation Act, 1906.

The Ship " ."

Whereas it is alleged by of

1. That on the day of personal injury by accident arising out of and in the course of his employment was caused to of in the port [*or harbour*] of ; and

2. That the said as the employer of the said has paid compensation [*or has had a claim for compensation made on him*] in respect of such injury under the Workmen's Compensation Act, 1906; and

3. That the said is [*or will become*] entitled to be indemnified under that Act by the owners of the ship " ," on the ground that the said injury was caused by the said ship [*or sustained on, in or about the said ship*], in consequence of the wrongful act, neglect, or default of the owners of the said ship, or the master or officers or crew thereof, or of some other person in the employment of the owners of the said ship, or of some defect in the said ship or its apparel or equipment; and

4. That the said ship has been found in the port [*or river*] of [*or within three miles of the coast of England*];

And whereas it has been shown to me, on the application of the said that the applicant probably is [*or will become*] entitled to be indemnified under the said Act, and that none of the owners of the said ship reside in the United Kingdom :

[And whereas the said has filed an undertaking to abide by any order which may hereafter be made as to damages, in case any person affected by this order shall sustain any damages by reason of this order which the said ought to pay];

Now I do hereby issue this order directed to you, the Chief Officer of Customs at [or other officer named by the judge], requiring you to detain the said ship until such time as the owners, agent, master, or consignee thereof have indemnified the said [] or paid compensation in respect of the said injury, or have given security in the sum of £ [], to be approved by the judge, to abide the event of any proceedings that may be instituted in respect of the said injury, or to recover such indemnity, and to pay such compensation, indemnity, and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law.

Dated this [] day of [].

Judge.

To the Chief Officer of Customs at
[or other officer named by the judge.]

FORM 33.

Bail Bond by way of Security where Order of Detention made on Application of Employer claiming Indemnity.

[Not to be printed, but to be used as a Precedent.]

In the County Court of [] holden at [].

The Shipowners' Negligence (Remedies) Act, 1905.

The Workmen's Compensation Act, 1906.

The Ship " [] ."

Whereas it is alleged—

1. That on the [] day of [] personal injury by accident arising out of and in the course of his employment was caused to [] of [] in the port [or harbour] of []; and
2. That [] of [] as the employer of the said [], has paid compensation [or has had a claim for compensation made on him] in respect of the said injury under the Workmen's Compensation Act, 1906; and
3. That the said [] is [or will become] entitled to be indemnified under that Act by the owners of the ship " [] ," on the ground that the said injury was caused by the said ship [or sustained on, in or about the said ship] in consequence of the wrongful act, neglect, or default of the owners of the said ship, or the master or officers or crew thereof, or of some other person in the employment of the owners of the said ship, or of some defect in the said ship or its apparel or equipment;

And whereas the judge of this Court has issued an order directed to the Chief Officer of Customs at [or other officer named by the judge], requiring him to detain the said ship until such time as the owners, agent, master, or consignee thereof have indemnified the said [] or paid compensation in respect of the said injury, or have given security in the sum of £ [], to be approved by the judge, to abide the event of any proceedings that may be instituted in respect of the said injury, or to recover such indemnity, and to pay such compensation, indemnity, and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law;

Now, therefore, we [*state names, addresses, and description of sureties*] jointly and severally submit ourselves to the jurisdiction of this Court, or of any other competent Court in England or Ireland in which any proceedings may be instituted in respect of the said injury, or to recover such indemnity, and consent that if the owners, agent, master, or consignee of the said ship shall not pay all such compensation, indemnity, and costs as may be awarded thereon execution may issue forthwith against us, our heirs, executors, and administrators, goods and chattels, for a sum not exceeding pounds.

[*Signatures of Sureties.*]

This bail bond was signed by the said
and
the sureties, the day of , 19 .

Before me,

Registrar.

[*or Clerk to the Registrar nominated
to take affidavits.*]

FORM 34.

Application for Appointment of new Arbitrator, Schedule II., Paragraph 8.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

In the matter of an Arbitration between

A.B.

of [*address*]
[*description*]

Applicant,

and

C.D. & Co., Limited,

of [*address*]
[*description*]

Respondents.

Application is hereby made to the judge on behalf of the above-named to appoint a new arbitrator in the above-mentioned matter in the place of Mr. , the arbitrator appointed therein, by reason of the death [*or refusal* [*or inability*] to act] of the said Mr. .

And the applicant hereby requests that a time and place may be fixed for the hearing of the application.

Dated this day of .

(Signed)

Applicant.

[*Or*

Applicant's Solicitor.]

FORM 35.

Summons on Application for Appointment of new Arbitrator.

[Title as in Application.]

You are hereby summoned to attend before the judge in chambers at
on the day of at the hour of in the noon,
on the hearing of an application on the part of for the appointment by
the judge of a new arbitrator in the above-mentioned matter in the place of
Mr. , the arbitrator appointed therein, by reason of the death [*or*
refusal [*or* inability] to act] of the said Mr. .

And take notice, that in default of your attendance at the time and place
above-mentioned, the judge will, on proof of the service of this summons,
proceed to hear and dispose of the said application.

Dated this day of

To

and to his [*or* thoir]
Solicitor.

Registrar.

FORM 36.

Form of Memorandum under Paragraph 9 of Schedule II.

[Not to be printed, but to be used as a Precedent.]

To the Registrar of the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906,
and

In the matter of an Arbitration between

A.B. of, &c.,

and

Applicant,

C.D. & Co., Limited,

of, &c.

Respondents.

[or, where the matter has been decided by agreement without arbitration,

In the matter of an Agreement between

A.B. of, &c.,

and

C.D. & Co., Limited,

of, &c.,

.]

Be it remembered, that on the day of personal injury was
caused to the above-named A.B. by accident arising out of and in the
course of his employment :

And that on the day of the following agreement was come to
by and between the said A.B. and the said C.D. & Co., Limited, that is
to say :

[or And that on the day of the following decision was given by a
committee representative of the said C.D. & Co., Limited, and their
workmen, having power to settle matters under the above-mentioned Act in
the case of the said C.D. & Co., Limited, and their workmen ; that is
to say :]

[*or* And that on the day of the following award was made and given by me, the undersigned , being an arbitrator agreed on by the said A.B. and the said C.D. & Co., Limited, ; that is to say:]

[*Here set out copy of agreement, decision, or award.*]

[*or, where death resulted from the accident,*

Be it remembered, that on the day of personal injury was caused to A.B. late of deceased, by accident arising out of and in the course of his employment, and that on the day of the said A.B. died as the result of such injury:]

And that on the day of the following agreement was come to by and between C.B. G.B. &c., the dependants of the said A.B. within the meaning of the above-mentioned Act, and the said C.D. & Co., Limited, that is to say:

[*or* And that on the day of the following decision was given by a committee representative of the said C.D. & Co., Limited, and their workmen, having power to settle matters under the above-mentioned Act in the case of the said C.D. & Co., Limited, and their workmen; that is to say:]

[*or* And that on the day of the following award was made and given by me, the undersigned , being an arbitrator agreed on by C.B. G.B. , &c., the dependants of the said A.B. within the meaning of the above-mentioned Act, and the said C.D. & Co., Limited, ; that is to say:]

[*Here set out copy of agreement, decision, or award.*]

A copy of the report of Mr. , a medical referee appointed to report in the above-mentioned matter, is hereunto annexed [*add, if so,* The said Mr. attended the arbitration on the day of].

You are hereby requested to record this memorandum, pursuant to paragraph 9 of the second schedule to the above-mentioned Act.

Dated this day of .

[*To be signed—*

In the case of an agreement, by the parties or some or one of them, or by their or his solicitor on their or his behalf:

In the case of a decision by a committee, by the chairman and secretary on behalf of the committee:

In the case of an award, by the arbitrator.]

NOTE.—*This form to be adapted to the circumstances of the case and the matter decided.*

FORM 37.

Notice of Memorandum having been received.

In the County Court of holden at .

[Heading as in Memorandum.]

TAKE NOTICE, that a memorandum, copy of which is hereto annexed, has been sent to me for registration.

Such memorandum appears to affect you.

I have therefore to request you to inform me within 7 days from this date whether you admit the genuineness of the memorandum, or whether you dispute it, and if so, in what particulars, or object to its being recorded, and if so, on what grounds.

If you do not inform me in due course that you dispute the genuineness of the memorandum or object to its being recorded, it may be recorded without further inquiry, and will be enforceable accordingly.

If you dispute its genuineness or object to its being recorded, it will not be recorded, except with your consent in writing, or by order of the judge of this Court.

Dated this day of .

To

Registrar.

FORM 38.

*Notice disputing Memorandum, or objecting to its being recorded.**[Not to be printed, but to be used as a Precedent.]*

In the County Court of holden at .

[Heading as in Memorandum.]

TAKE NOTICE, that the undersigned C.D. & Co., of &c., dispute the genuineness of the memorandum sent to you for registration in the above-mentioned matter in the following particulars:—

[here state particulars.]

[or TAKE NOTICE, that the undersigned C.D. & Co., of &c., object to the memorandum sent to you for registration in the above-mentioned matter being recorded, on the following grounds:—

[here state grounds—see particularly Schedule 2, par. 9, proviso (b)] .]

Dated this day of .

C.D. & Co., Limited,

by

Secretary.

[or

Solicitors for C.D. & Co., Limited.]

To

The Registrar.

FORM 39.

Notice that Memorandum is disputed, or of Objection to its being recorded.

[Heading as in Memorandum.]

TAKE NOTICE, that the genuineness of the memorandum in the above-mentioned matter left with *[or sent to]* me for registration is disputed by of , a party affected by such memorandum, in the following particulars:

[here state particulars of dispute.]

[or that of , a party interested in the memorandum in the above-mentioned matter left with *[or sent to]* me for registration, objects to the same being recorded, on the following grounds:

[here state grounds.]]

The memorandum will therefore not be recorded, except with the consent in writing of the said , or by order of the judge of this Court.

Dated this day of .

To

Registrar.

FORM 40.

Notice of Application for Registration of Memorandum or for Rectification of Register.

[Not to be printed, but to be used as a Precedent.]

In the County Court of holden at .

[Heading as in Memorandum.]

TAKE NOTICE, that I intend to apply to the judge at on the day of , at the hour of o'clock in the noon *[in case of notice by solicitor, on behalf of of]*, for an order for the registration of the memorandum sent to the registrar in the above-mentioned matter *[or for an order for the rectification of the memorandum recorded in the above-mentioned matter]* by *[state particulars of rectification applied for]*, and for consequential directions, and for costs.

Dated this day of .

Applicant.

[Or Applicant's Solicitor.]

To the Registrar of the Court
and to
and to Messrs.
[his [or their] solicitors].

STATUTORY LIABILITY OF EMPLOYERS.

FORM 41.

Notice to Parties where Registrar refers the Question of recording a Memorandum of an Agreement to the Judge under Schedule II., Paragraph 9, Proviso (d).

In the County Court of holden at .

[*Heading as in Memorandum.*]

TAKE NOTICE, that I have refused to record the memorandum sent to me in this matter for registration, and have referred the matter to the judge, pursuant to proviso (d) to paragraph 9 of the second schedule to the Act, it appearing to me that the said memorandum ought not to be registered by reason of—

- (a) the inadequacy of the lump sum agreed to be paid in redemption of the weekly payment referred to in the memorandum; *or*
- (b) the inadequacy of the amount of compensation agreed to be paid to , a person under legal disability; *or*
- (c) the inadequacy of the amount of compensation agreed to be paid to and , dependants; *or*
- (d) the agreement having been obtained by fraud [*or undue influence or improper means*].

AND FURTHER TAKE NOTICE, that by order of the judge you are hereby summoned to attend before the judge at a Court to be holden at on the day of at the hour of in the noon, when the matter will be inquired into by the judge;

And that if you do not attend either in person or by your solicitor on the day and at the hour above mentioned such order will be made and proceedings taken as the judge may think just and expedient.

Dated this day of .

Registrar.

To [*all parties concerned*].

FORM 42.

Application for Removal of Record of Memorandum of Agreement from Register under Schedule II., Paragraph 9, Proviso (c).

In the County Court of holden at .

[*Heading as in Memorandum.*]

TAKE NOTICE, that I intend to apply to the judge at on the day of at the hour of in the noon, for an order for the removal from the register of the record of the memorandum of the agreement in the above-mentioned matter which was recorded on the

day of _____, pursuant to proviso (e) to paragraph 9 of the second schedule to the above-mentioned Act, on the ground that the said agreement was obtained by fraud [*or* undue influence *or* improper means], and for consequential directions, and for costs.

Dated this _____ day of _____

Applicant.

[*Or* Applicant's Solicitor.]

To the Registrar of the Court
and to
Messrs.
and his [*or* their] Solicitor.

FORM 43.

Notice to Parties where Judge directs Inquiry as to Removal of Record of Memorandum of Agreement from Register under Schedule II., Paragraph 9, Proviso (e).

In the County Court of _____ holden at _____

[*Heading as in Memorandum.*]

WHEREAS it has been made to appear to the judge that an inquiry should be held as to the removal from the register of the record of the memorandum of the agreement in the above-mentioned matter which was recorded on the _____ day of _____, pursuant to proviso (e) to paragraph 9 of the second schedule to the above-mentioned Act, on the ground that the said agreement was obtained by fraud [*or* undue influence *or* improper means]:

TAKE NOTICE, that you are hereby summoned to attend before the judge at a Court to be holden at _____ on _____ the _____ day of _____ at the hour of _____ in the _____ noon, when the matter will be inquired into by the judge;

AND that if you do not attend either in person or by your solicitor on the day and at the hour above-mentioned such order will be made and proceedings taken as the judge may think just and expedient.

Dated this _____ day of _____ .

Registrar.

To [*all parties concerned*].

FORM 44.

Form of Certificate under Section 1, Sub-section 4.

In the County Court of holden at No. of plaint.

Between

A.B.,
 of [address]
 [description] Plaintiff,

and

C.D. & Co., Limited,
 of [address]
 [description] Defendants.

And in the matter of the Workmen's Compensation Act, 1906.

I hereby certify that on the day of the above-named plaintiff commenced the above-named action against the above-named defendants claiming

[here state claim of plaintiff in action.]

And that on the trial of the said action on the day of it was determined that the injury in respect of which the plaintiff claimed damages in the said action was one for which the defendants were not liable in the said action, but that such defendants would have been liable to pay compensation in respect of such injury under the above-mentioned Act;

And that thereupon the said action was dismissed, but the Court, on the request of the plaintiff, proceeded to assess the compensation which the defendants would have been liable to pay under the said Act.

And that the Court assessed such compensation at the sum of £ and directed [*state directions given as to payment of compensation, and directions, if any given, as to costs, and as to the deduction from the compensation of any costs which in the judgment of the Court were caused by the plaintiff bringing the action instead of proceeding under the Act*].

Dated this day of

Registrar.

FORM 48.

Application for Reference to Medical Referee under Schedule I., Paragraph 15.

[Not to be printed, but to be used as a Precedent.]

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

In the matter of a claim for compensation made by A.B. of ,
against C.D. & Co., Limited , of .

[or, where an arbitration is pending,

In the matter of an arbitration between A.B.

of *[address]*

[description]

Applicant,

and

C.D. & Co., Limited ,

of *[address]*

[description]

Respondents.

[or, where application is made after weekly payment has been settled,

In the matter of an agreement *[or a decision or award or certificate]*
recorded in the above-mentioned Court as to the weekly payment
payable to A.B. , of , by C.D. & Co., Limited ,
of .

Application is hereby made to the Court on behalf of the above-named A.B. and C.D. & Co., Limited, for a reference in the above-mentioned matter to a medical referee pursuant to paragraph 15 of the first schedule to the above-mentioned Act under the following circumstances:—

1. On the day of notice was given by *[or on behalf of]*
the above-mentioned A.B. to the above-mentioned C.D. & Co.,
Limited , of personal injury caused to the said A.B. by accident
arising out of and in the course of his employment, in respect of which
injury the said A.B. claims compensation from the said C.D. & Co.,
Limited, under the said Act.

[or, where arbitration is pending,

1. An arbitration under the said Act is pending between the above-mentioned A.B. and the above-mentioned C.D. & Co., Limited ,
as to the amount of compensation payable to the said A.B. under the
said Act in respect of personal injury caused to him by accident arising out
of and in the course of his employment.]

[or, where weekly payment has been settled,

1. Under an agreement *[or a decision or award or certificate]* in the above-mentioned matter, recorded in this Court on the day of , a weekly payment is payable to the above-mentioned A.B. by the above-mentioned C.D. & Co., Limited, as compensation in respect of personal injury caused to the said A.B. by accident arising out of and in the course of his employment.]

2. The weekly payment claimed by *[or payable to]* the said A.B.
is .

3. A question has [or Questions have] arisen between the said A.B. and the said C.D. & Co., Limited, , as to the condition [or fitness for employment] of the said A.B. [or as to whether [or to what extent] the incapacity of the said A.B. is due to the accident], [or as to the condition [or fitness for employment] of the said A.B. and as to whether [or to what extent] the incapacity of the said A.B. is due to the accident], and no agreement can be come to between the said C.D. & Co., Limited, and the said A.B. with reference to such question [or questions].

4. The said A.B. has submitted himself for examination by a medical practitioner provided by the said C.D. & Co., Limited, [or has been examined by a medical practitioner selected by himself] [or, *if so*, the said A.B. has submitted himself for examination by a medical practitioner provided by the said C.D. & Co., Limited, and has also been examined by a medical practitioner selected by himself], and a copy of the report of the said practitioner is [or copies of the reports of the said practitioners are] annexed to this application.

The applicants request that an order may be made referring the matter to a medical referee for his certificate as to the condition of the said A.B. and his fitness for employment, specifying if necessary the kind of employment for which he is fit [or for his certificate whether [or to what extent] the incapacity of the said A.B. is due to the accident] [or for his certificate as to the condition of the said A.B. and his fitness for employment, specifying if necessary the kind of employment for which he is fit, and as to whether [or to what extent] the incapacity of the said A.B. is due to the accident].

Dated this day of .
(Signed)

Applicant.
[Or Applicant's Solicitor.]
C.D. & Co., Limited,
by Secretary,
[or Solicitors for C.D. & Co., Limited.]

To the Registrar.

FORM 49.

Order of Reference, Schedule I., Paragraph 15.

In the County Court of holden at .

[*Heading as in Application.*]

On the application of A.B. of and C.D. & Co., Limited, of (a copy of which is hereto annexed), I hereby appoint Mr. of , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to examine the said [*name of workman*], and to give his certificate as to the condition of the said and his fitness for employment, specifying if necessary the kind of employment for which he is fit [or his certificate whether [or to what extent] the incapacity of the said is due to the accident] [or his certificate as to the condition of the said and his fitness for employment, specifying if necessary the kind of employment for which he is fit, and as to whether [or to what extent] the incapacity of the said is due to the accident].

Copies of the reports of the medical practitioners by whom the said has been examined are hereto annexed.

The said , who is now at , has been directed to submit himself for examination by the referee.

STATUTORY LIABILITY OF EMPLOYERS.

I am satisfied that the said _____ is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and place as may be fixed by the referee. [or The said _____ does not appear to be in a fit condition to travel for the purpose of being examined.]

The referee is requested to forward his certificate to the Registrar at the County Court Office situate at _____ on or before the _____ day of _____.

Dated this _____ day of _____ .
Registrar

FORM 50.

Order on Injured Workman to submit himself for Examination by Medical Referee.

In the County Court of _____ holden at _____ .
[Heading as in Application.]

To A.B. _____, of _____ [address and description].

TAKE NOTICE, that I have appointed Mr. _____, of _____, one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to examine you in accordance with the application in the above-mentioned matter for a reference to a medical referee.

You are hereby required to submit yourself for examination by the referee [add, where workman is in a fit condition to travel, and to attend for that purpose at such time and place as may be fixed by him].

Dated this _____ day of _____ .
Registrar.

FORM 51.

Notice to Parties of Certificate of Medical Referee.

In the County Court of _____ holden at _____ .
[Heading as in Application.]

TAKE NOTICE, that I have received the certificate of the medical referee appointed in this matter, and that you may inspect the same during office hours at my office situate at _____, and may on request and at your own cost be furnished with or take a copy thereof.

Dated this _____ day of _____ .
To _____ Registrar.
and _____

FORM 52.

Notice of Application for Suspension of Right to Compensation or to take or prosecute Proceedings in relation to Compensation, or of Right to Weekly Payments, under Schedule I., Paragraph 4, Paragraph 14, or Paragraph 15, and Rule 55.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

In the matter of a claim for compensation made by A.B.
of against C.D. & Co., Limited, of .

[*Or, where an arbitration is pending,*

In the matter of an arbitration between

A.B.

of [*address*]
[*description*]

Applicant,

and

C.D. & Co., Limited,

of [*address*]
[*description*]

Respondents.]

[*Or, where application is made after weekly payment has been settled,*

In the matter of an agreement [*or a decision or an award or a certificate*] recorded in the above-mentioned Court as to the weekly payment payable to A.B. of by C.D. & Co., Limited, of .]

TAKE NOTICE, that I intend to apply to the judge at on the
day of at the hour of in the noon [on behalf of
Messrs. C.D. & Co., Limited, of, &c.] for an order suspending your
right to compensation in the above-mentioned matter and to take or prosecute
any proceedings under the above-mentioned Act in relation to compensation
[*or suspending your right to weekly payments in the above-mentioned matter*], on the ground that you refuse to submit yourself to medical examination as required by me [*or by the said C.D. & Co., Limited*],
in accordance with paragraph 4 [*or paragraph 14*] of the first schedule to the
Act [*or that you obstruct the medical examination required by me [or by the
said C.D. & Co., Limited], in accordance with paragraph 4 [or paragraph 14]*
of the first schedule to the Act], [*or on the ground that you refuse to submit
yourself for examination by a medical referee as ordered under paragraph 15
of the first schedule to the Act, or that you obstruct the examination by a
medical referee ordered under paragraph 15 of the first schedule to the Act*],
and for consequential directions, and for costs.

Dated this day of .

To A.B., of

and to Messrs.
his Solicitors.

(Signed) C.D. & Co., Limited,
by Secretary.

[*Or* Solicitors for C.D. & Co., Limited.]

FORM 53.

Præcipe for Payment into Court under Schedule I., Paragraph 5.

[Not to be printed, but to be used as a Precedent.]

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906,
and

In the matter of an Arbitration between

A.B.		
of, &c.		Applicant,
	and	
C.D. & Co., Limited,		Respondents.
of, &c.		
	or	

[In the matter of an agreement between

A.B.	
of, &c.	
	and
C.D. & Co., Limited,	
of, &c.]	
	or

[In the matter of a Certificate given in an action in [*state Court*],

Between

A.B.		
of, &c.		Plaintiff,
	and	
C.D. & Co., Limited,		Defendants]
of, &c.		

[Or as the case may be.]

TAKE NOTICE, that C.D. & Co., Limited, of [*or Messrs.*
solicitors for C.D. & Co., Limited, of] do pay into Court [*when*
paid by solicitors, and at the request and by the authority of the said C.D. &
Co., Limited,], the sum of [*state sum in letters*] , being the sum
awarded [*or agreed or directed*] to be paid by the said C.D. & Co., Limited,
as compensation in the above-mentioned matter.

Dated this day of .

(Signed)	C.D. & Co., Limited,
by	Secretary.
[<i>Or</i>	Solicitors for C.D. & Co., Limited.]

To the Registrar.

Received the above-mentioned sum of .	
	Registrar.
	[<i>Date.</i>]

FORM 53A.

Præcipe for Payment into Court under Schedule I., Paragraph 5, where no valid Agreement can be come to.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .
No. of Matter.

In the matter of the Workmen's Compensation Act, 1906,
and

In the matter of an injury by accident to A.B. , late of ,
which resulted in the death of the said A.B.

TAKE NOTICE,

1. That on the day of personal injury by accident arising out of and in the course of his employment was caused at [*state place of accident*] to A.B. , late of deceased, a workman employed by [*or* by , a contractor with for the execution of work undertaken by them], and on the day of the death of the said A.B. resulted from the injury.

2. There is no dispute as to the liability of the said to pay compensation under the above-mentioned Act to the dependants of the said A.B. in respect of the injury caused to them by the death of the said A.B., or as to the amount payable as compensation, but no valid agreement can be come to in the matter by reason of the disability [*or absence*] of the dependants or some of them.

3. The said of [*or Messrs.* , solicitors for the said of] do therefore pay into Court [*when paid by solicitors, add at the request of the said*] the sum of [*state sum in letters*], being the amount payable by the said as compensation in the above-mentioned matter.

4. To the best of the knowledge and belief of the said the persons interested in the said sum as dependants of the said A.B. are [*State dependants, with their ages and relationship to deceased workman, and places of residence, so far as known.*]

Dated this day of .

(Signed)
[*or*

Solicitors for .]

To the Registrar.

Received the above-mentioned sum of .

Registrar.
[*Date.*]

FORM 53B.

Notice by Registrar of Payment into Court under Schedule I., Paragraph 5.

In the County Court of holden at .

[*Heading as in Præcipe for Payment into Court.*]

TAKE NOTICE, that the sum of has been paid into Court as compensation in the above-mentioned matter.

Any person interested in the said sum may apply to the Court for an order for the investment and application of the said sum for the benefit of the persons entitled thereto in accordance with paragraph 5 of the first schedule to the Workmen's Compensation Act, 1906, and the rules of Court made under the said Act.

Dated this day of .

Registrar.

To

Hours of attendance, &c.

STATUTORY LIABILITY OF EMPLOYERS.

FORM 53c.

*Application for Investment or Application of Money paid into Court
under Schedule 1., Paragraph 5.*

[Not to be printed, but to be used as a Precedent.]

(1) *Application for Investment and Application of the Sum paid into Court.*

In the County Court of holden at .

[Heading as in *Præcipe for Payment into Court.*]

TAKE NOTICE, that I [name and address of applicant] intend to apply to the judge at , on the day of , at the hour of in the noon, on behalf of myself and of [specify the persons on whose behalf the application is made], as dependants of the above-named A.B., for an order for the investment and application of the sum paid into Court in the above-mentioned matter, and for the allotment of the same between the dependants of the said A.B.

To the best of my knowledge and belief the persons interested in the said sum as dependants of the said A.B. are

[State dependants, with their ages and relationship to deceased workman,
and places of residence.]

I intend to apply for an order for the investment and application of the said sum, and for the allotment of the same between the dependants of the said A.B. as follows, viz.:—

[State how applicant wishes the sum to be dealt with]

or in such other manner as the Court in its discretion thinks fit for the benefit of the persons entitled thereto under the above-mentioned Act, and for consequential directions.

Dated this day of .

(Signed)

To the Registrar and [to any other parties interested, where the application is made on behalf of some only of the parties interested].

(2) *Application for Investment and Application of the Amount allotted to any Person.*

In the County Court of holden at .

[Heading as in *Præcipe for Payment into Court.*]

TAKE NOTICE, that I [name and address of applicant] intend to apply to the judge at on the day of at the hour of in the noon, on behalf of myself [or of] for an order for the investment and application of the sum paid into Court in the above-mentioned matter and allotted to me [or to the said].

I intend to apply for an order for the investment and application of the said sum as follows, viz.:—

[State how applicant wishes the sum to be dealt with]

or in such other manner as the Court in its discretion thinks fit for my benefit [or for the benefit of the said], and for consequential directions.

Dated this day of .

(Signed)

To the Registrar.

FORM 54.

Application for Order for Payment into Court of Weekly Payment payable to Person under Disability. Schedule I., Paragraph 7.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

[*Heading as in Award, Memorandum or Certificate.*]

TAKE NOTICE, that I [*name and address of applicant*] intend to apply to the judge at on the day of , at the hour of in the noon, for an order that the weekly payment payable in the above-mentioned matter to a person under legal disability [*or to me*] be during his [*or my*] disability paid into Court, and for consequential directions.

Dated this day of .

(Signed)

To the Registrar
and [*to the parties*
interested].

FORM 55.

Application for Variation of Order under Schedule I., Paragraph 9.

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Award, Memorandum or Certificate.*]

TAKE NOTICE, that I [*name and address of applicant*] intend to apply to the judge at a Court to be holden on the day of , at the hour of in the noon, for an order that the order of the Court [*or the award*] made in the above-mentioned matter on the day of as to the apportionment of the sum paid as compensation among the dependants of A.B. deceased [*or as to the manner in which the sum payable to a dependant of A.B. deceased, should be invested, applied or otherwise dealt with*] may be varied by directing [*here state variation claimed by applicant*] and for consequential directions.

And further take notice that the circumstances in which this application is made are

[*State particulars.*]

Dated this day of .

(Signed)

Applicant.

[*Or*

Applicant's Solicitor.]

To the Registrar,
and to [*all persons*
interested].

FORM 56A.

Application by Workman intending to cease to reside in the United Kingdom for Reference to Medical Referee under Schedule I., Paragraph 18.

[Not to be printed, but to be used as a Precedent.]

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906,
and

In the matter of an agreement [or a decision or an award or a certificate]
recorded in the above-mentioned Court as to the weekly payment
payable to A.B. of by C.D. & Co., Limited, of .

TAKE NOTICE, that A.B. of , to whom under an agreement [or a decision or an award or a certificate] in the above-mentioned matter recorded in this Court on the day of a weekly payment of is payable by the above-mentioned C.D. & Co., Limited, as compensation for personal injury caused to the said A.B. by accident arising out of and in the course of his employment, intends to cease to reside in the United Kingdom;

And that the said A.B. intends to apply to the registrar at , on the day of , at the hour of in the noon, for an order referring to a medical referee the question whether the incapacity of the said A.B. resulting from the injury is likely to be of a permanent nature.

A report of a medical practitioner, setting out the nature of the incapacity of the said A.B. resulting from the injury, is hereto annexed.

Dated this day of .

(Signed)

Applicant.

[Or

Applicant's Solicitor.]

To the Registrar of the Court
and to [the employer].

FORM 57A.

Order of Reference, Schedule I., Paragraph 18.

In the County Court of holden at .

[Heading as in Application, Form 56A.]

On the application of of (a copy of which is hereto annexed),

I hereby appoint Mr. of , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to examine the said [name of workman] , and to give his certificate as to whether the incapacity of the said [name of workman] resulting from the injury is likely to be of a permanent nature.

A copy [or copies] of the report [or reports] of the medical practitioner [or practitioners] by whom the said has been examined is [or are] hereto annexed.

The said , who is now at , has been directed to submit himself for the examination by the referee.

I am satisfied that the said is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and place as may be fixed by the referee.

[or The said does not appear to be in a fit condition to travel for the purpose of being examined.]

The referee is requested to forward his certificate to the registrar at the County Court Office situate at on or before the day of , specifying therein the nature of the incapacity of the said resulting from the injury, and whether such incapacity is likely to be of a permanent nature.

Dated this day of .

Judge [or Registrar].

FORM 58A.

[To be printed on thick blue foolscap.]

Certificate of Identity.

[TO BE CAREFULLY PRESERVED.]

NOTICE.—THIS CERTIFICATE IS NO SECURITY WHATEVER FOR A DEBT.

No. of Certificate .

In the County Court of holden at .

[*Heading as in Award, Memorandum, or Certificate.*]

This is to certify that A.B. late of [*address and description*], is entitled to a weekly payment of from [*name and address of employer*] as compensation payable to the said A.B. in respect of personal injury caused to him by accident arising out of and in the course of his employment, such weekly payment to continue during the total or partial incapacity of the said A.B. for work: And that the description of the said A.B. and his incapacity for work, as certified by the medical referee appointed in this matter, are as follows:—

Age,

Height,

Hair,

Eyes,

Nature of incapacity,

[*Describe nature of incapacity, and whether the same is total or partial, as in certificate of medical referee.*]

Dated this day of .

Registrar.

FORM 59.

Notice to be given to Workman intending to cease to reside in the United Kingdom.

[Heading as in Award, Memorandum, or Certificate.]

TAKE NOTICE, that if you desire to obtain payment of the weekly payments payable to you under the award [memorandum or certificate] hereto annexed while you are residing out of the United Kingdom, you must, at intervals of three months from the date up to which such payments have been made, submit yourself to examination by a medical practitioner in the place where you are residing, and produce to him the copy of the certificate of the medical referee and the certificate of identity hereto annexed; and you must obtain from such medical practitioner a certificate in the form hereto annexed that he has examined you, and that your incapacity resulting from the injury specified in the certificate of the medical referee continues; and such certificate must be verified by the medical practitioner by declaration in your presence before some such person as hereinafter mentioned.

You must also attend before some such person as hereinafter mentioned, and make a declaration in the form hereto annexed that you are the same person as mentioned in the copy of the certificate of the medical referee and in the certificate of identity hereto annexed, and in the certificate of the medical practitioner by whom you have been examined, producing to such person the copy and certificates above mentioned.

You must then transmit to me, at my office, situate at _____ the certificate of the medical practitioner by whom you have been examined, and your declaration, together with a request for transmission to you of the amount of the weekly payment due to you, specifying the place where and the manner in which the amount is to be transmitted, according to the form hereto annexed, which request must be signed in your own handwriting.

The persons before whom a certificate may be verified or a declaration made are :—

1. Any person having authority to administer an oath in the place in which you reside.
2. Any British ambassador, envoy, minister, chargé d'affaires, or secretary of embassy or legation, exercising his functions in any foreign place in which you reside, or any British consul-general, consul, vice-consul, acting-consul, pro-consul, or consular agent exercising his functions in any foreign place in which you reside.

Dated this _____ day of _____ .

Registrar.

To A.B.

of [address and description].

FORM 60.

Form of Medical Certificate to be obtained by Workman residing out of the United Kingdom.

[Heading as in Award, Memorandum, or Certificate.]

I [name, address, and medical qualification of medical practitioner] hereby certify that I have this day examined A.B. of , whom I conscientiously believe to be the same person as A.B. of , described in the copy certificate of the medical referee in the above-mentioned matter, dated the day of , and in the certificate of identity dated the day of produced to me by the said A.B. ; and that in my opinion the incapacity of the said A.B. resulting from the injury described in the said certificate of the medical referee still continues.

Dated this day of .

(Signature)

Declared at this day of , in the presence of the said A.B. , the copy of the certificate of the medical referee and the certificate of identity above-mentioned being at the same time produced,

Before me—

[Signature and description of person before whom the declaration is made.]

FORM 61.

Declaration of Identity by Workman residing out of the United Kingdom.

[Heading as in Award, Memorandum, or Certificate.]

I, A.B. of hereby declare that I am the same person as A.B. of described in the copy of the certificate of the medical referee in the above-mentioned matter, dated the day of , now produced by me, and in the certificate of identity, dated the day of , now produced by me, and the same person as A.B. of described in the certificate of declared by the said in my presence on the day of , and now produced by me.

(Signed)

A.B.

Declared at this day of , the certificates above-mentioned being at the same time produced,

Before me—

[Signature and description of person before whom the declaration is made.]

STATUTORY LIABILITY OF EMPLOYERS.

FORM 62.

Request for Transmission of Amount of Weekly Payments by Workman residing out of United Kingdom.

[*Heading as in Award, Memorandum, or Certificate.*]

Sir,

I herewith enclose medical certificate and affidavit of identity, and request that the amount of the weekly payments due to me in the above-mentioned matter may be transmitted to me at

[*give full address*]

[*state how transmission to be made, as*],—

by Post Office Order payable at

[*name of Post Office*]

or by bankers' draft on the

[*name and address of Bank*].

I am, Sir,

Your obedient servant,
A.B.

[*To be signed by the workman in his own handwriting.*]

To the Registrar
of the County Court of
holden at

[*add address of Registrar's Office.*]

FORM 63.

Notice by Registrar to Employer of Receipt of Medical Certificate and Declaration of Identity.

[*Heading as in Award, Memorandum, or Certificate.*]

TAKE NOTICE, that I have received proof of identity and of continuance of incapacity in the above-mentioned matter.

And I have to request you to transmit the sum of _____, being the amount of the weekly payments payable to A.B. _____ under the above-mentioned award [memorandum or certificate] from [the date to which they were last paid _____] to [13 weeks from that date] to me, to be by me remitted to the said A.B. _____.

Dated this _____ day of _____.

Registrar.

To [name and address of employer].

FORM 64.

*Notice of Application for Determination of Amount of Costs under Schedule II., Paragraph 14.**[Not to be printed, but to be used as a Precedent.]*

In the County Court of holden at .

[Heading as in Award or Memorandum.]

TAKE NOTICE, that I intend to apply to the judge at on the
 day of at the hour of o'clock in the noon, to determine
 the amount of costs to be paid to me as solicitor *[or agent]* for you A.B.
 in the above-mentioned matter;
 and for an order declaring that I am entitled to a lien for such amount on
 or to deduct such amount from the sum awarded as compensation to you the
 said A.B. in the above-mentioned matter, and for consequential
 directions.

Dated this day of .

Applicant.

To the Registrar of the Court,
 and to
 A.B.
 of

FORM 65.

Execution on Award or Memorandum or Certificate.

In the County Court of holden at .

[Heading as in Award, Memorandum, or Certificate.]

Whereas on the day of an award was made in the above-
 mentioned matter by the judge *[or by Mr. , an arbitrator appointed by*
the judge] whereby it was ordered *[state operative parts of award]:*

[or Whereas on the day of a memorandum was recorded in this
Court of an agreement [or a decision or an award] come to [or given or
made] in the above-mentioned matter, whereby it was agreed [or ordered]
[state operative parts of agreement, decision, or award]:]

[or Whereas on the day of a memorandum was recorded in this
Court of a certificate given by the County Court of holden at to
the effect that [state operative parts of certificate]:]

And whereas default has been made in payment of the sum of £
 payable by the said into Court *[or to the said A.B.]*
 according to the said award *[or memorandum or certificate];*

If possession is kept after the seventh day at the written request of both parties, the fees and cost of keeping possession as above may be allowed for a reasonable further time in respect of such possession.

If the goods are removed, the debtor will have to pay the appraisement fee as undermentioned.

If the goods are sold, the following fees are chargeable for the appraisement and sale, and no others:—

For the appraisement, SIXPENCE IN THE POUND on the value of the goods appraised, over and above the stamp duty.

For the sale, including advertisements, catalogues, sale and commission, and delivery of the goods, ONE SHILLING IN THE POUND ON THE NET PRODUCE OF THE SALE.

For advertising and giving publicity to any sale by auction, pursuant to section 145 of the Bankruptcy Act, 1883, in addition to the last-mentioned fee, the sum actually and necessarily paid.

Where no sale takes place by reason of the execution being withdrawn, satisfied, or stopped, there may be allowed all charges actually and necessarily incurred for inventory, appraisement, cataloguing, lotting, and preparing for sale, not exceeding ONE SHILLING IN THE POUND on the value of the goods seized, if such value does not exceed ten pounds, and EIGHTPENCE IN THE POUND on any excess above ten pounds, the value to be fixed by appraisement in case of dispute, and in addition any sum actually and necessarily paid for advertising pursuant to section 145 of the Bankruptcy Act, 1883.

If the goods are removed, the bailiff is required to give the debtor a sufficient inventory of the goods so removed, and to give him notice of the time when and the place where such goods will be sold, at least twenty-four hours before the time fixed for the sale.

If the goods are sold, the bailiff is required to furnish the debtor, on request, with a detailed account in writing of the sale, and of the application of the proceeds thereof.

[*This form to be adapted to the circumstances of the case where execution is ordered to issue under Rule 66, paragraph (e), for costs.*]

FORM 66.

Judgment Summons on Award, Memorandum, or Certificate.

In the County Court of holden at

[*Heading as in Award, Memorandum, or Certificate.*]

Whereas on the day of an award was made in the above-mentioned matter by the judge [*or by Mr.* , an arbitrator appointed by the judge], whereby it was ordered [*state operative parts of award*]:

[*or* Whereas on the day of a memorandum was recorded in this Court of an agreement [*or a decision or an award*] come to [*or given or made*] in the above-mentioned matter, whereby it was agreed [*or ordered*] [*state operative parts of agreement, decision, or award*]:

STATUTORY LIABILITY OF EMPLOYERS.

[*or* Whereas on the day of a memorandum was recorded in this Court of a certificate given by the County Court of holden at to the effect that [*state operative parts of certificate*] :

And whereas default has been made in payment of the sum of £ payable by you the above-named into Court [*or* to the said A.B.] according to the said award [*or* memorandum *or* certificate] :

You the said are therefore hereby summoned to appear personally in this Court at [*place where court holden*] on the day of 19 , at the hour of in the noon, to be examined on oath by the Court touching the means you have or have had since the date of the award [*or* memorandum *or* certificate] to pay the said sum, in payment of which you have made default; and also to show cause why you should not be committed to prison for such default, or why a receiving order should not be made against you pursuant to sub-section 5 of section 103 of the Bankruptcy Act, 1883.

Dated this day of 19 .

Registrar.

To [*name and address of the party against whom the summons is issued*].

	£	s.	d.
Amount in payment of which default has been made			
Costs of this summons			
Total sum due			

NOTE.—*This form to be adapted to the circumstances of the case where a summons is issued under the County Court Rules, Order XXV., Rule 27, against a person alleged to be a partner in or sole member of a firm, or to be carrying on business in any name other than his own; see Form 184 in the Appendix to the County Court Rules. If an order of commitment is made it should be according to Form 189 or Form 191 in the said Appendix, such form being adapted to the case of default in payment of an amount due under an award, memorandum, or certificate.*

FORM 67.

Register.

The Workmen's Compensation Act, 1906.

Register.

No. of Matter.	Title.	Date of Proceedings.	Nature.
1	In the matter of arbitration between A.B., of, &c., Applicant, and C.D. & Co., Limited, of, &c., Respondents.	July 11, 1907	Request for arbitration filed, and copy sent to judge.
		July 20, 1907	Appointment of Mr. as arbitrator.
		July 24, 1907	Copy request sent to arbitrator.
		July 29, 1907	Day for arbitration fixed.
		July 29, 1907	Notice of day fixed sent to applicant, and notice with copy request sent to respondents by registered post.
		Aug. 5, 1907	Respondents' answer filed; copies sent to arbitrator and applicant.
		Aug. 8, 1907	Application by applicant for discovery; order made.
		Aug. 15, 1907	Respondents' affidavit filed.
		Aug. 19, 1907	Five subpoenas issued on application of applicant's solicitor.
		Aug. 23, 1907	Arbitration held; Mr. appointed as medical referee to report; further hearing adjourned.
		Sept. 5, 1907	Report of medical referee received and forwarded to arbitrator; notice given to the parties.
		Oct. 16, 1907	Further hearing. Award made as follows [<i>enter minute of award</i>].
		Oct. 23, 1907	Costs of applicant taxed at £ .
		Nov. 5, 1907	£ for costs paid into Court by respondents.
		Nov. 11, 1907	£ for costs paid to applicant's solicitor.
2	In the matter of an agreement between A.B., of , and E.F. & Co., Limited, of, &c.	Oct. 7, 1907	Memorandum of agreement as to compensation, signed by solicitor of A.B., left to be recorded.
		Oct. 8, 1907	Notice and copy memorandum sent by post to E.F. & Co., Limited.

STATUTORY LIABILITY OF EMPLOYERS.

No. of Matter.	Title.	Date of Proceedings.	Nature.
		Oct. 10, 1907	Notice received from E.F. & Co., Limited, disputing memorandum.
		Oct. 10, 1907	Notice sent to A.B.'s solicitor, that memorandum is disputed, and will not be recorded without consent in writing of E.F. & Co., Limited, or order of judge.
		Oct. 15, 1907	Application on behalf of A.B. that memorandum be recorded.
		Oct. 22, 1907	Application heard, and order made that memorandum be recorded with alterations.
		Oct. 24, 1907	Memorandum recorded as follows [set out memorandum].
		Oct. 31, 1907	Costs of A.B. taxed and allowed at £ .
		Nov. 18, 1907	Execution issued for costs.
			&c., &c., &c.

NOTE.—*Similar entries to be made as to all matters required to be recorded.*

We, William L. Selfe, William Cecil Smyly, Robert Woodfall, Thomas C. Granger, and H. Tindal Atkinson, being the five judges of the County Courts appointed for the making of Rules under section one hundred and sixty-four of the County Courts Act, 1888, having made the foregoing Rules of Court, pursuant to paragraph twelve of the Second Schedule to the Workmen's Compensation Act, 1906, do hereby certify the same under our hands, and submit them to the Lord Chancellor accordingly.

Wm. L. Selfe.

William Cecil Smyly.

R. Woodfall.

T. C. Granger.

H. Tindal Atkinson.

I allow these Rules,

Loreburn, C.

The 1st of June, 1907.

COUNTY COURT, ENGLAND.

Fees.

TREASURY ORDER, DATED MAY 30, 1907, REGULATING FEES IN
COUNTY COURTS.

In pursuance of the powers given by the County Courts Act, 1888, and of all other powers enabling us in this behalf, We, the undersigned, being two of the Commissioners of His Majesty's Treasury, whose names are hereunto subscribed, do hereby, with the consent of the Lord Chancellor, order that on and after the 1st day of July, 1907, the following alterations in the Treasury Order regulating fees in County Courts, dated the 30th day of December, 1903, shall have effect.

Joseph A. Pease.

J. Herbert Lewis.

I approve of this Order.

Loreburn, C.

SCHEDULE A.

Paragraph 46 is hereby annulled, and the following paragraph shall stand in lieu thereof.

46.—(a) No court fee shall be payable under this Schedule by any party in respect of any proceedings by or against a workman under the Workmen's Compensation Act, 1906, or the Workmen's Compensation Rules, 1907, in the County Court prior to the award. *Conf. Act.*
Sched. 2,
par. 13.

(b) On an application for the settlement of any matter by arbitration under the said Act and Rules, when such application is not a proceeding by or against a workman, plaint and hearing fees shall be payable as in an ordinary action, and the poundage shall be calculated as upon a claim for a sum of twenty pounds.

(c) Where a notice of claim to contribution or indemnity is filed under the said Act and Rules, a fee shall be paid on an award on such claim, or on the hearing of such claim, in like manner as on entering judgment on a default summons under paragraph 5, or the hearing of an action, as the case may be.

(d) In proceedings under the said Act and Rules for the enforcement of an award, memorandum, or certificate, or an order for payment of costs, the same fees shall be taken as on the like proceedings for the enforcement of a

judgment for the like amount given in an action, less, in any case in which fees for the issue, service, or execution of any process are prescribed by Schedule B, the amount of such fees.

(c) On interpleader proceedings arising out of an execution issued for the enforcement of an award, memorandum, or certificate, or an order for payment of costs under the said Act and Rules, fees shall be paid in like manner as on interpleader proceedings arising out of an execution issued in an action.

SCHEDULE B.—PART I.

General.

Registrar's Fees.

The words "The Workmen's Compensation Act, 1906, and the Workmen's Compensation Rules, 1907," shall be substituted for the words "The Workmen's Compensation Acts, 1897 and 1900, or the Workmen's Compensation Rules, 1898 to 1900," in paragraphs 8 and 9.

Paragraph 26 is hereby annulled, and the following paragraph shall stand in lieu thereof.

26. On proceedings under the Workmen's Compensation Act, 1906, and the Workmen's Compensation Rules, 1907.

(N.B.—*These fees, with the exception of Nos. 6 and 7, are not to be taken in respect of proceedings by or against a workman prior to the award.*)

	£	s.	d.
1. On the filing of a special case under Rule 32	0	5	0
2. On an order for the detention of a ship, an order of release, a bail bond, or an affidavit of justification, under the Workmen's Compensation Act, 1906, or the Shipowners' Negligence (Remedies) Act, 1905.....	0	7	6
3. On an Order adding a respondent under Rule 39 (4)	0	4	0
4. On an application to rectify the register or to remove a record from the register under Schedule 2, par. 9 (c) or (e), and Rule 48 or Rule 50	0	4	0
5. For preparing a Certificate under section 1, sub-section 4, and Rule 51	0	5	0
6. On an application for a reference to a medical referee under Schedule 1, paragraph 15, the fee prescribed by Rule 54 (9).			
7. On a reference to a Medical Referee in accordance with regulations made by the Secretary of State pursuant to section 8 (1) (f)	0	10	0
8. On an application for the suspension of the right to compensation or to take proceedings, or of the right to weekly payments, under Schedule 1, pars. 4, 14 or 15, and Rule 55	0	4	0
9. On an application for investment, &c., under Schedule 1, par. 5, and Rule 56 (8) or Rule 59	0	4	0
10. On an application for the payment of weekly payments into Court under Schedule 1, par. 7, and Rule 57 (3)	0	4	0

11. On an application for the variation of an Order under Schedule 1, par. 9, and Rule 58	£	s.	d.
	0	4	0
12. For every investment made by a registrar, including the payment out or application of a sum allotted to any person by weekly or other periodical payments (charged once only, and to be deducted from the sum ordered to be invested or allotted). For every 10/., or part of 10/., invested, but so that the total fee shall not exceed 50s. ...	0	5	0
13. On an application for a reference to a medical referee under Schedule 1, par. 18, and Rule 60	0	4	0
14. For a certificate of identity under Rule 60 (b) (c)	0	5	0
15. For receiving and forwarding any sum due to a workman residing out of the United Kingdom under Rule 60 (13) (to be deducted from the sum to be forwarded)	0	5	0
16. For every taxation of the costs of an award, or between third parties and other parties to an arbitration	0	10	0
17. For every other taxation of costs	0	5	0
18. On an application to the judge under Rule 65 (3 to 5) at a date subsequent to the hearing of the arbitration	0	4	0
19. On an application to the judge under Rule 66 (e) other than an application for an order for execution to issue	0	4	0
20. For examining every affidavit in support of an application for issue of execution or a judgment summons under Rules 67 (2) or 68 (2)	0	1	6
21. On an application to set aside or vary an award or order under Rule 70	0	4	0
22. For every Office copy or certified copy of documents filed or records made in reference to any matter, per folio	0	0	4
23. For every sitting under Rule 35	0	10	0
24. On any other proceeding not herein specified, for which if such proceeding were taken in an action, a fee would be payable, the fee which would be payable if such proceeding were taken in an action.			

High Bailiff's Fees.

The words "the Workmen's Compensation Act, 1906, and the Workmen's Compensation Rules, 1907," shall be substituted for the words "the Workmen's Compensation Acts, 1897 and 1900, or the Workmen's Compensation Rules, 1898 to 1900," in paragraphs 41 and 42.

42A. Where the high bailiff is directed to detain a ship under the Workmen's Compensation Act, 1906, or the Shipowners' Negligence (Remedies) Act, 1905, the same fees for execution of the order for detention and for keeping possession of the vessel as for executing a warrant of arrest and keeping possession of a vessel in an Admiralty action where the amount claimed exceeds 100/., being part of the costs, charges and expenses attending the custody of the ship (Rule 37 (8)).

42B. On any proceeding under the Workmen's Compensation Act, 1906, and the Workmen's Compensation Rules, 1907, not herein specified (not

being a proceeding by or against a workman prior to the award) for which, if such proceeding were taken in an action a fee would be payable, the fee which would be payable if such proceeding were taken in an action.

MASTER AND SERVANT.

Workmen's Compensation Act, 1906.

REGULATIONS, DATED JUNE 21, 1907, MADE BY THE SECRETARY OF STATE AND THE TREASURY AS TO THE DUTIES AND FEES OF CERTIFYING AND OTHER SURGEONS, AND AS TO REFERENCES TO, AND REMUNERATION AND EXPENSES OF, MEDICAL REFEREES, IN ENGLAND AND WALES, UNDER SECTION 8 OF THE ACT.

I, the Right Honourable Herbert John Gladstone, one of His Majesty's Principal Secretaries of State, and We, the Lords Commissioners of His Majesty's Treasury, in pursuance of the powers respectively conferred on us by the Workmen's Compensation Act, 1906, section 8, sub-sections (1) (f), (3) and (5), and section 10, sub-section (1), hereby make the following regulations:—

Definitions.

1. In these regulations—

- (i) "Act" means the Workmen's Compensation Act, 1906.
- (ii) "Workman" means a workman as defined in section 13 of the Act.
- (iii) "Certifying Surgeon" means either the certifying surgeon mentioned in sub-section (1) (i) of section 8 of the Act, or a medical practitioner appointed by the Secretary of State under sub-section (5) of section 8 to have the powers and duties of a certifying surgeon under the said section.
- (iv) "Appointed Surgeon" means a surgeon having power, in pursuance of any special rules or regulations made under the Factory and Workshop Act, 1901, to suspend a workman from employment in the process or processes specified in such rules or regulations.
- (v) "Medical Referee" means a medical practitioner appointed by the Secretary of State to act as medical referee for the purposes of section 8 of the Act.
- (vi) The words "disease to which the Act applies" mean a disease mentioned in the third schedule to the Act or a disease or injury (not being an injury by accident) to which the provisions of section 8 of the Act have been extended by an Order made by the Secretary of State under sub-section (6) of that section.

2. Where a workman applies to a certifying surgeon for a certificate (hereinafter called "a certificate of disablement") that he is suffering from a

disease to which the Act applies, and is thereby disabled from earning full wages at the work at which he was employed, the certifying surgeon, on payment of the prescribed fee, and after obtaining the particulars specified in the schedule to these regulations and such further information, if any, respecting the case as in the particular circumstances he may deem necessary, shall either proceed at once, if the application is made by the workman in person, to make a medical examination of the workman, or shall appoint forthwith a time and place for making such examination, and give notice thereof to the workman. Such notice, if given in writing, shall follow, as closely as may be, the form prescribed in the schedule. Form 1.

3. After personally examining the workman, the certifying surgeon shall either give the workman a certificate of disablement or shall certify that he is not satisfied that the workman is entitled to such certificate, and shall in either case deliver his certificate to the workman. The certificate given shall be in the form prescribed in the schedule to these regulations. Form 2.

4. Where, in pursuance of any special rules or regulations made under the Factory and Workshop Act, 1901, the certifying or appointed surgeon, after having personally examined a workman, suspends him from his usual employment on account of his having contracted any disease to which the Act applies, or where in the case of a workman applying to be suspended on account of his having contracted any such disease, the surgeon as aforesaid, after having personally examined such workman, refuses to order his suspension, he shall, on the application either of the employer or of the workman, and on payment of the prescribed fee, certify such suspension or refusal to suspend in accordance with the form prescribed in the schedule to these regulations, and shall deliver such certificate to the applicant. Forms 3 and 5.

5. Where a certificate of disablement is given or a workman is suspended, and the case is one in which, under the provisions of sub-section (2) of section 8 of the Act as extended by any Order of the Secretary of State made under sub-section (6) of the said section, the disease contracted by the workman will be deemed, unless the employer proves, or the certifying surgeon certifies, to the contrary, to have been due to the nature of the employment in the process in which at or immediately before the date of the disablement or suspension the workman was employed, the certifying surgeon, if he is of opinion that the disease contracted by the workman was not due to the nature of such employment, shall certify accordingly. Such certificate shall, where possible, be given simultaneously with, and included in, the certificate of disablement or the certificate (if any) of suspension, but may also be given separately on application by the employer and on payment of the prescribed fee; and in either case shall follow the form prescribed in the schedule to these regulations. Forms 6 and 8.

For the purposes of this regulation an appointed surgeon shall have the same powers and duties as a certifying surgeon.

6. A copy of any certificate given by a certifying or appointed surgeon under the foregoing regulations shall, together with any other documents relating to the case, be retained and kept by the surgeon; and copies of any such certificate shall, on payment of the prescribed fee, be supplied by the surgeon to the employer and the workman. See Forms 4 and 7.

7. The fees which the certifying and appointed surgeons shall be entitled to charge in respect of duties performed under section 8 of the Act shall be as follows :—

Fees payable by the Workman.

- (i) For any certificate given under regulation 3—
 - (a) In cases where the medical examination of the workman is made by the surgeon in the performance of his duties under the Factory and Workshop Act, 1901, a fee of 1s. ;
 - (b) in all other cases, a fee of 5s., and where the workman is unable to present himself for examination at the residence of, or other nearer place fixed by, the certifying surgeon, for every mile or portion thereof which the certifying surgeon is required to travel therefrom for the purpose of examining the workman, an additional fee of 1s.
- (ii) For any certificate of suspension or refusal to suspend, under regulation 4, when the medical examination of the workman is made in pursuance of any special rules or regulations under the Factory and Workshop Act, 1901, a fee of 1s.
- (iii) For a copy of any certificate obtained under regulation 6, a fee of 1s.

Fees payable by the Employer.

- (iv) For any certificate of suspension or refusal to suspend, obtained by the employer under regulation 4, a fee of 1s.
- (v) Where the employer applies under regulation 5 for a certificate that the disease contracted is not due to the nature of the employment, in respect of every such application (to include the certificate, if given), a fee of 2s. 6d.
- (vi) For a copy of any certificate obtained under regulation 6, a fee of 1s.

References to Medical Referees.

8. Where an employer or workman is aggrieved by the action of a certifying or appointed surgeon in giving or refusing to give a certificate of disablement or in suspending or refusing to suspend a workman, he may—

- (a) if he is an employer, within seven days of the receipt of the notice of disablement or suspension required to be given under the Act, or, in a case of disablement, if the notice is not accompanied by the certificate of the surgeon, or a copy thereof, and the employer forthwith requires the workman to furnish him with a copy, within seven days of the receipt of such copy, or
- (b) if he is a workman, within seven days of the date on which the surgeon has refused to give him a certificate of disablement or suspension,

apply to the registrar of the county court for the district in which the workman was employed at the time of his examination by the surgeon, for the matter to be referred to a medical referee; provided that it shall be within the discretion of the registrar, on good cause shown, to extend in any case by not more than seven days the period within which an application is required to be made.

9.—(a) Any application under the foregoing regulation shall be made in writing, and shall state the grounds on which the reference is asked for, in accordance with the form prescribed in the schedule to these regulations, or as near thereto as may be. Forms 9 and 10.

(b) The application shall be accompanied by the certificate or a copy of the certificate obtained from the surgeon by whose action the applicant is aggrieved, and by any available report or reports of any medical practitioner by whom the workman has been examined; and if the applicant is an employer, by the notice of disablement or suspension served on him by the workman, and by an undertaking to pay any reasonable travelling expenses incurred by the workman in attending for examination by the medical referee.

(c) The applicant shall also file with the registrar such copies of the application and other documents as aforesaid as may be necessary for the use of the medical referee and of the employer or workman, as the case may be, hereinafter referred to as the respondent, who together with the applicant is directly interested in the application.

(d) In the event of any dispute as to the amount of the travelling expenses payable to the workman by the employer, the matter may be referred to the registrar, whose decision shall be final.

10. It shall be the duty of the registrar on receiving an application to satisfy himself that it is duly made in accordance with the foregoing regulations, and if it is not, to return it for amendment. If and when the application is in accordance with the regulations, he shall refer the matter forthwith to a medical referee, and shall forward to such medical referee by registered post one of the copies of the application and the other documents filed therewith, with an order of reference according to the form prescribed Form 11. in the schedule.

11. The registrar shall also make an order directing the workman to Form 12. submit himself for examination by the medical referee. Before making such order the registrar shall inquire whether the workman is in a fit condition to travel for the purpose of examination, and if satisfied that he is in a fit condition shall by the order direct him to attend at such time and place as the referee may fix, and if satisfied that he is not in a fit condition to travel, shall so state in the order of reference; and it shall be the duty of the workman, on being served with the order, to submit himself for examination accordingly.

12. The registrar shall deliver or send by registered post to both parties a copy of the order of reference, and shall also send to the respondent copies of the other documents forwarded to the medical referee, and shall send to the workman a copy of the order directing him to submit himself for examination.

13. In the case of a reference under these regulations, the medical referee shall be one of those appointed by the Secretary of State for the county court circuit which includes the district in which the case arises, and if the circuit has been sub-divided and medical referees have been appointed for the sub-divisions, shall be one appointed for the sub-division comprising the aforesaid district. Provided that if any medical referee is or has been

specially appointed by the Secretary of State, either for the circuit or otherwise, for the purpose of deciding on any specified case or class of cases in which a reference may be made under these regulations, the reference in any such case shall be made to the medical referee so appointed. Provided also that if the surgeon by whose action the applicant is aggrieved, has been appointed a medical referee, the reference shall not be made to him, but to such other medical referee as may be authorised to act.

Forms 13
and 14.

14. The medical referee shall, on receipt of an order of reference duly signed by the registrar of a county court, together with copies of the documents required to be sent therewith, fix a time and a place for a personal examination of the workman, and shall send notice to the employer and workman accordingly. It shall be the duty of the workman, and, if the employer is the applicant, of the employer or a person duly authorised by him, to attend at the time and place fixed by the medical referee, and in the event of failure on the part of the workman or employer or both to appear as required by this regulation, the medical referee shall decide on the matter referred to him forthwith upon such information as shall be available and with or without a personal examination. Provided that where the absence of the employer or his representative or of the workman is shown to the satisfaction of the medical referee to be unavoidable, or where the medical referee considers it necessary to apply for expert assistance as hereinafter provided, it shall be open to him to adjourn the inquiry on the reference and to resume it at such time and place as he may fix, after giving due notice to all parties concerned.

15. Except as otherwise provided by regulation 14, the medical referee shall, before deciding on the matter referred to him, make a personal examination of the workman, and shall consider any statements made or submitted by either party.

Form 15.

16. The medical referee shall, in the form prescribed in the schedule to these regulations (subject to such additions and modifications as the circumstances of the case may require) notify in writing his decision to the registrar of the county court, to the applicant and to the respondent.

Form 16.

17. The medical referee shall send to the Home Office at the end of each quarter a statement (accompanied by any vouchers necessary), in the form prescribed in the schedule to these regulations, of the fees due to him for the quarter under these regulations.

18. The following fees and allowances are authorised to be paid to medical referees under these regulations :—

- (i) For deciding the matter referred to him in any reference and for all duties performed in connection therewith, two guineas.
- (ii) Where in order to examine the workman the medical referee is compelled to travel to a place distant more than two miles from his residence or such other centre as may be prescribed by the Secretary of State, in addition to the above fee, 5s. for each mile beyond two, and up to ten, miles distant from such residence or centre, and thereafter 1s. for each mile distant therefrom.
- (iii) In cases involving special difficulty the medical referee may apply for special expert assistance which may be granted by the Secretary of State if he thinks fit, on such terms as to remuneration or otherwise, as he may with the sanction of the Treasury determine.

19. In cases where a claim is made under regulation 18 (ii.) in respect of an examination of a workman, the medical referee, in submitting his quarterly statement under regulation 17, shall certify the distance of the place where the examination was made from his residence or other prescribed centre.

20. The registrar of a county court shall keep a record, in the form pre- Form 17.
scribed in the schedule, of all references made by him under these regulations, and shall send the same to the Secretary of State at the end of each quarter.

21. These regulations shall come into force on the 1st day of July, 1907, and shall apply to England and Wales.

H. J. Gladstone,
One of His Majesty's Principal
Secretaries of State.

Joseph A. Pease,
Cecil Norton,
Two of the Lords Commissioners of
His Majesty's Treasury.

21st June, 1907.

SCHEDULE.

FORM 1.

*Particulars to be obtained by Certifying Surgeon upon application by
Workman for Certificate of Disablement.*

1. Name and address of workman ...
 2. Disease in respect of which certifi- }
cate is applied for }
 3. Symptoms complained of.....
 4. Employment to the nature of }
which disease is attributed }
 5. Name and place of business of }
employer who last employed }
workman in such employment... }
 6. [Where application is not made by
workman in person] whether }
workman is able to travel for }
purposes of examination }
-

FORM 2.

*Notice to Workman of time and place appointed for his Examination
by Surgeon.*

Workmen's Compensation Act, 1906.

I hereby give you notice, with reference to your application for a certificate of disablement under section 8, sub-section (1), of the above-named Act, that I propose to examine you at _____ on the _____ day of _____ at _____ o'clock, and that you are required to submit yourself for examination accordingly.

To [*the Workman*].

(Signed)

FORM 3.

Certificate of Disablement.

Workmen's Compensation Act, 1906.

I (*a*), as certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district of _____ [*or as a medical practitioner appointed by the Secretary of State to have the powers and duties of a certifying surgeon for the purposes of section 8 of the Act*], hereby certify that having personally examined (*b*) _____ on the _____ day of _____ I am satisfied that (*c*) _____ is suffering from (*d*) _____ being one of the diseases to which the Workmen's Compensation Act applies, and is thereby disabled from earning full wages at the work at which (*c*) _____ has been employed; and I * certify that the disablement commenced on the _____ day of _____.

1. Full name and address of workman
2. Process in which workman states
he was employed at or immediately before the date of disablement
3. Name and place of business of employer stated by workman to have last employed him in process above-mentioned
4. Leading symptoms of disease

Dated this _____ day of _____.

(Signed)

(*a*) Strike out portion of description inapplicable.

(*b*) Name of workman.

(*c*) "He" or "she."

(*d*) Name disease according to the terms in which it is described in the third schedule to the Act or Order of the Secretary of State adding it to the schedule.

* If the surgeon is unable to certify a date on which the disablement commenced, he should strike out this part of the certificate. In that case the disablement will be deemed to have commenced on the date on which this certificate is given. See section 8 (4) of the Act.

FORM 4.

*Certificate (supplementary to a Certificate of Disablement) to be given by
Certifying Surgeon in circumstances mentioned in Regulation 5.*

1. *When the certificate is included in the certificate of disablement, it should run as follows :—*

But whereas the said workman appears to have been employed at or immediately before the date of disablement in (a) being a process (b) the second column of the third schedule to the Act, and the disease contracted by him, viz. (c) is a disease which (d) is set opposite the above-mentioned process, I hereby certify that in my opinion the said disease is not due to the nature of such employment.

Dated this day of .

(Signed)

2. *When the certificate is given separately on a subsequent application of the employer, it should be in the following form :—*

Workmen's Compensation Act, 1906.

Whereas I (e), the certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district of [or as a medical practitioner appointed by the Secretary of State to have the powers and duties of a certifying surgeon, for the purposes of section 8 of the above-named Act], on the day of certified that (f) was suffering from (c), being a disease to which the Workmen's Compensation Act applies, and was thereby disabled from earning full wages at the work at which he was employed; and whereas the said (f) appears to have been employed at or immediately before the date of disablement in (a) being a process (b) the second column of the third schedule to the Act, and the disease above-named is a disease which (d) is set opposite the above-mentioned process, I hereby certify that, in my opinion, the said disease was not due to the nature of such employment.

Dated this day of .

(Signed)

(a) Name process.

(b) "Mentioned in" or "added by an Order of the Secretary of State to."

(c) Name disease.

(d) "In the first column of that schedule" or "under the provisions of the said Order."

(e) Strike out portion of description inapplicable.

(f) Name of workman.

FORM 5.

Certificate of Certifying Surgeon refusing to give Certificate of Disablement.

Workmen's Compensation Act, 1906.

I, (a) as certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district of [or as a medical practitioner appointed by the Secretary of State to have the powers and duties of a certifying surgeon for the purposes of section 8 of the above Act], hereby certify that having personally examined (b) who has applied for a Certificate of Disablement in respect of (c) being a disease to which the Workmen's Compensation Act applies, I am not satisfied that (d) is suffering from the said disease so as to be disabled from earning full wages at the work at which (d) has been employed.

1. Full name and address of work-
man
2. Employment to nature of which
disease complained of was attri-
buted.....
3. Name and place of business of
employer stated by workman to
have last employed him in such
employment.....

Dated this day of .
(Signed)

- (a) Strike out portion of description inapplicable.
(b) Name workman.
(c) Describe disease.
(d) "He" or "she."

FORM 6.

Certificate of Suspension by Certifying or Appointed Surgeon.

Workmen's Compensation Act, 1906.

I, the (a) surgeon for (b) hereby certify that after personally examining (c), I have on the day of in pursuance of the (d) made under the Factory and Workshop Act, 1901, suspended the said (c) from (c) usual employment on account of (e) having contracted (f) being a disease to which the Workmen's Compensation Act applies.

1. Full name and address of work-
man
2. Employment from which work-
man is suspended
3. Name and place of business of
employer
4. Leading symptoms of disease

Dated this day of .
(Signed)

- (a) "Certifying" or "appointed."
(b) Name works at which workman is employed.
(c) Name workman.
(d) Name the special rules or regulations governing the employment.
(e) "His" or "her."
(f) Describe disease.

FORM 7.

Certificate to be given by Surgeon in cases of suspension in circumstances mentioned in Regulation 5.

1. *When the certificate is included in a certificate of suspension, it should run as follows :—*

But whereas the said workman appears to have been employed at or immediately before the date of suspension in (a) being a process (b) the second column of the third schedule to the Act, and the disease contracted by him, viz. (c) is a disease which (d) is set opposite the above-mentioned process, I hereby certify that in my opinion the said disease is not due to the nature of such employment.

Dated this day of .

(Signed) .

(a) Name process.

(b) "Mentioned in" or "added by an Order of the Secretary of State to."

(c) Name disease.

(d) "In the first column of that schedule" or "under the provisions of the said Order."

2. *When the certificate is given separately on an application by the employer, it should be in the following form :—*

Workmen's Compensation Act, 1906.

Whereas I, the (a) surgeon for (b) on the day of in pursuance of the (c) made under the Factory and Workshop Act, 1901, suspended (d) from (e) usual employment on account of (e) having contracted (f) being a disease to which the Workmen's Compensation Act applies, and whereas the said (d) appears to have been employed at or immediately before the date of suspension in (g) being a process (h) the second column of the third schedule to the Act, and the disease above named is a disease which (i) is set opposite the above-mentioned process, I hereby certify that in my opinion the said disease was not due to the nature of such employment.

Dated this day of

(Signed)

(a) "Certifying" or "appointed."

(b) Name works at which workman was employed.

(c) Name special rules or regulations governing the employment.

(d) Name of workman.

(e) "His" or "her."

(f) Describe disease.

(g) Name process.

(h) "Mentioned in" or "added by an Order of the Secretary of State to."

(i) "In the first column of that schedule" or "under the provisions of the said Order."

FORM 8.

Certificate by Certifying or Appointed Surgeon of Refusal to suspend.

Workmen's Compensation Act, 1906.

I, the *(a)* surgeon for *(b)* hereby certify that *(c)* having applied to me to be suspended from his usual employment in pursuance of *(d)* made under the Factory and Workshop Act, 1901, on account of *(e)* having contracted *(f)* being a disease to which the Workmen's Compensation Act applies, I have after personally examining the said *(c)* refused to suspend *(g)*.

1. Full name and address of work-
man
2. Name and place of business of
employer
3. Grounds for refusal to suspend

Dated this day of .

(Signed)

- (a)* "Certifying" or "appointed."
- (b)* Name works at which workman is employed.
- (c)* Name workman.
- (d)* Name the code of special rules or regulations governing the employment.
- (e)* "His" or "her."
- (f)* Describe disease.
- (g)* "Him" or "her."

FORM 9.

Application by Employer for Reference to Medical Referee.

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906,
and

In the matter of a Certificate of Disablement [*or Suspension*] granted in the case of [*name and address of workman*] in pursuance of the provisions of section 8 of the above-mentioned Act and the regulations made thereunder by the Secretary of State.

Application for a reference in the above-mentioned matter to a medical referee, pursuant to section 8, sub-section (1) (f), of the Act and to the above-mentioned regulations, is hereby made on behalf of [*name and place of business of applicant*] who states:—

1. That on the day of notice of disablement [*or suspension*] was given to the applicant by the above-mentioned under the provisions of the said Act.

2. That the said notice was consequent on a certificate of disablement given [*or order of suspension made*], on the day of , in pursuance of the said Act and regulations, by Mr. residing at [*full address*], the certifying surgeon under the Factory and Workshop Act, 1901, for the district of [*or a medical practitioner appointed by the Secretary of State to have the powers and duties of a certifying surgeon under section 8 of the said Act, or a surgeon appointed in pursuance of*] [*describe special rules or regulations under the Factory Act*] at [*name of factory or other place of employment*].

3. That the applicant is aggrieved by the action of the above-mentioned Mr. _____ in giving the said certificate [*or in making the said order of suspension*] and claims that the said _____ had not contracted the disease in respect of which the said certificate was given [*or in respect of which the said order was made*] [*or, in the case of a certificate of disablement, was not suffering from the disease therein specified so as to be disabled from earning full wages at the work at which he was employed*], in support of which claim he mentions the following circumstances [*state grounds for claim, e.g., report of any doctor employed by applicant*].

And the applicant hereby undertakes, if the matter is referred to a medical referee, to repay to the said [workman] any reasonable travelling expenses he may incur in attending for examination by such referee.

Two copies of this application are annexed hereto, together with a copy of the notice and certificate of disablement [*or suspension*]. (The above-mentioned report of the medical practitioner employed by me, and two copies thereof, are also annexed.)

Dated this day of . (Signed)

Applicant.

To the Registrar.

FORM 10.

Application by Workman for Reference to Medical Referee.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906,
and

In the matter of a Refusal of a certifying [or appointed] Surgeon to give a Certificate of Disablement to [or to suspend] *[name and address of applicant]* in pursuance of the provisions of section 8 of the above-mentioned Act and the regulations made thereunder by the Secretary of State.

Application for a reference in the above-mentioned matter to a medical referee, pursuant to section 8, sub-section (1) (f), of the said Act and to the above-mentioned regulations, is hereby made on behalf of the said who states :—

1. That on the day of applicant applied to Mr. residing at [full address] the certifying surgeon under the Factory and Workshop Act, 1901, for the district of [or a medical practitioner appointed by the Secretary of State to have the powers and duties of a certifying surgeon for the purposes of section 8 of the said Act, or a surgeon appointed in pursuance of [describe special rules or regulations under Factory Act] at [name of factory, or other place of employment]], for a certificate of disablement [or to be suspended] in respect of a disease to which the provisions of section 8 of the Workmen's Compensation Act apply.

2. That the said Mr. _____ refused to give the applicant a certificate of disablement [or to suspend the applicant] and certified to such refusal by a certificate, dated the _____ day of _____, which is annexed to this application.

3. That the applicant is aggrieved by the action of the said Mr. _____ in refusing to give him a certificate of disablement [*or to suspend him*] and claims that he was suffering from the said disease, and was thereby disabled from earning full wages at the work at which he was employed [*or in the case of a refusal to suspend, that he had contracted the said disease and was thereby entitled, in accordance with the special rules [*or regulations*] made under the Factory and Workshop Act, 1901, for the process in which he was employed, to be suspended*], in support of which claim he mentions the

following circumstances [*state grounds of claim, e.g., report, if any, of doctor employed by applicant*].

4. That the employer on whom the applicant, if the matter is referred to a medical referee and decided in favour of the applicant, would serve the statutory notice of disablement [*or suspension*] is [*name and place of business of employer*].

Two copies of this application and the certificate of the surgeon (together with the above-mentioned report of the medical practitioner employed by applicant and two copies thereof) are annexed hereto.

Dated this day of .
(Signed)

Applicant.

To the Registrar.

FORM 11.

Order of Reference to Medical Referee.

In the County Court of holden at .
[*Heading as in application.*]

On the application of [a copy of which is hereto annexed], I hereby appoint Mr. of , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to decide on the matter arising on the said application.

Copies of the notice and certificate of disablement [*or suspension*], [and of a report of a medical practitioner by whom the workman referred to in the application has been examined], are hereto annexed.

Or, if the workman is the applicant,

A copy of the certificate of the surgeon referred to in the application [together with a copy of a report of a medical practitioner by whom applicant has been examined], is hereto annexed.

The said , who is now at , has been directed to submit himself for examination by the referee.

I am satisfied that the said is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and place as may be fixed by the referee.

[*Or the said does not appear to be in a fit condition to travel for the purpose of being examined.*]

Dated this day of .

Registrar.

FORM 12.

Order on Workman to submit himself for Examination by Medical Referee.

In the County Court of holden at .
[*Heading as in Application.*]

To A.B. , of [*address and description*].

TAKE NOTICE, that I have appointed Mr. , of , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to decide on the matter arising on the above application.

You are hereby required to submit yourself for examination by the referee [*add, where workman is in a fit condition to travel, and to attend for that purpose at such time and place as may be fixed by him.*]

Dated this day of .

Registrar.

FORM 13.

*Notice by Medical Referee to Workman.**Workmen's Compensation Act, 1906.*

I hereby give you notice that I have received from the Registrar of the County Court at _____, an order of reference appointing me to decide on your appeal against the action of Mr. _____ [*name of surgeon*] in refusing to give you a certificate of disablement [*or to suspend you*].

Or, if the employer is the appellant,

on the appeal made by _____ [*name of employer*] against the action of Mr. _____ [*name of surgeon*] in giving you a certificate of disablement [*or in suspending you*];

And that you are required to attend [*or, if the workman has been ascertained not to be in a fit condition to travel, to submit yourself*] for examination at _____ on the _____ day of _____ at _____ o'clock.

Any statement made or submitted by you shall be considered.

(Signed)

Medical Referee.

To _____

FORM 14.

*Notice by Medical Referee to Employer.**Workmen's Compensation Act, 1906.*

I hereby give you notice that I have received from the Registrar of the County Court at _____, an order of reference appointing me to decide on your appeal against the action of Mr. _____ [*name of surgeon*] in giving a certificate of disablement to [*or in suspending*] _____ [*name of workman*].

Or, if the workman is the appellant,

on the appeal made by _____ [*name of workman*] against the action of Mr. _____ [*name of surgeon*] in refusing to give him a certificate of disablement [*or to suspend him*];

And that I propose to examine _____ [*name of workman*] at _____ on the _____ day of _____ at _____ o'clock.

Any statement made or submitted by you shall be considered.

Add, if the employer is the appellant,

You, or some person duly authorised by you, are hereby required to attend at the above time and place.

Dated this _____ day of _____ .

(Signed)

Medical Referee.

To _____

STATUTORY LIABILITY OF EMPLOYERS.

FORM 15.

*Decision of Medical Referee.**(Heading as in application.)*

I hereby give you notice that having duly inquired into the above-mentioned matter in accordance with the regulations of the Secretary of State, I decide as follows:—

I dismiss [*or allow*] the appeal of [*name of employer*] against the certificate of disablement given to [*name of workman*] on the day of

or

I dismiss [*or allow*] the appeal of [*name of employer*] against the suspension of [*name of workman*] on the day of

or

I dismiss the appeal of [*name of workman*] against the refusal of Mr. [*name of surgeon*] to give him a certificate of disablement in respect of [*name of disease*].

or

I allow the appeal of [*name of workman*] against the refusal of Mr. [*name of surgeon*] to give him a certificate of disablement in respect of [*name of disease*], and I fix the day of as the date on which the disablement commenced,

or

I dismiss [*or allow*] the appeal of [*name of workman*] against the refusal of Mr. [*name of surgeon*] to suspend him on the day of

Dated this day of .

(Signed)

Medical Referee.

To [*the Registrar*],
and to [*the Employer*],
and to [*the Workman*].

MASTER AND SERVANT.

Workmen's Compensation Act, 1906.

REGULATIONS, DATED JUNE 24, 1907, MADE BY THE SECRETARY OF STATE AND THE TREASURY AS TO THE DUTIES AND REMUNERATION OF MEDICAL REFEREES IN ENGLAND AND WALES UNDER THE PROVISIONS OF THE FIRST AND SECOND SCHEDULES TO THE WORKMEN'S COMPENSATION ACT, 1906.

I, the Right Honourable Herbert John Gladstone, one of His Majesty's Principal Secretaries of State, and We, the Lords Commissioners of His Majesty's Treasury, in pursuance of the powers respectively conferred on us by the Workmen's Compensation Act, 1906, hereby make the following regulations:—

Part I.—Definitions and General Regulations.

1. In these regulations—

- (i) "Medical Referee" means a medical practitioner appointed by the Secretary of State to act as medical referee for the purposes of the Workmen's Compensation Act, 1906.
- (ii) "Reference" means—

(a) in regulations in Part II., the appointment of a medical referee by the registrar of a county court, to give a certificate, in accordance with the provisions of paragraph (15) of the first schedule to the Workmen's Compensation Act, 1906, as to the condition of the workman and his fitness for employment or as to whether or to what extent the incapacity of the workman is due to the accident.

(b) in regulations in Part III., the appointment of a medical referee by the registrar of a county court to give a certificate, in accordance with the provisions of paragraph (18) of the first schedule to the Workmen's Compensation Act, 1906, as to whether the incapacity resulting from the injury is likely to be of a permanent nature.

(c) in regulations in Part V., the appointment of a medical referee by a committee, arbitrator or judge to report on any matter material to any question arising in an arbitration under the Workmen's Compensation Act, 1906.

- (iii) "Committee" means a committee representative of an employer and his workman, with power to settle matters under the Workmen's Compensation Act, 1906, in the case of the employer and workmen.
- (iv) "Agreed Arbitrator" means a single arbitrator agreed on by the parties to settle any matter which under the Workmen's Compensation Act, 1906, is to be settled by arbitration.
- (v) "Appointed Arbitrator" means a single arbitrator appointed by the judge.
- (vi) "Judge" means County Court Judge.
- (vii) The words "district in which the case arises" mean the county court district in which all the parties concerned reside, or, if they reside in different districts, the district prescribed by rules of Court, subject to any transfer made under those rules.

2. In the case of any reference under these regulations, the medical referee, in the absence of special circumstances, shall be one of those appointed by the Secretary of State for the county court circuit which includes the district in which the case arises, and shall, if the circuit has been sub-divided, and medical referees have been appointed for the sub-divisions, be one appointed for the sub-division which comprises the aforesaid district. Provided that, where there has been a previous reference in any case, any subsequent reference in the same case shall, if possible, be made to the same referee and be accompanied by the previous report or certificate, or copy thereof, of the medical referee.

3. The medical referee shall not accept any reference under these regulations unless signed or countersigned by the registrar of a county court and sealed with the seal of the county court.

4. The medical referee shall send to the Home Office at the end of each quarter statements, in the forms prescribed in the schedule to these regulations, of the fees due to him for the quarter under these regulations. Forms I, J,
K, and L.

5. In cases where a claim is made under the regulations in respect of travelling expenses, the medical referee, in submitting his quarterly statements under regulation 4, shall certify the distance of the place to which he was required to travel from his residence or other prescribed centre.

6. In cases involving special difficulty the medical referee may apply to the Secretary of State for special expert assistance which may be granted by the Secretary of State, if he thinks fit, on such terms as to remuneration or otherwise as he may with the sanction of the Treasury determine.

7. The registrar of every county court shall keep a record, in the form Form M. prescribed in the schedule, of all references made under these regulations, and of all cases in which a medical referee is summoned to sit as assessor, and shall send a copy thereof to the Secretary of State at the end of each quarter.

8. These regulations shall come into force on the 1st day of July, 1907, and shall apply to England and Wales.

*Part II.—Regulations as to References under Schedule I., paragraph (15).*Forms A.
and B.

9. The medical referee shall, on receipt of a reference duly signed and sealed, fix a time and place for the examination of the workman, and shall send notice accordingly to both the parties signing the application on which the reference is made.

10. Before giving the certificate required by the reference, the medical referee shall personally examine the workman and shall consider any statements that may be made or submitted by either party.

Form C.

11. The certificate given by the medical referee shall be according to the form prescribed in the schedule to these regulations.

12. The medical referee shall forward his certificate to the registrar from whom he received the reference.

13. The following shall be the scale of fees to be paid to medical referees in respect of references under this part of the regulations :—

- (i) For a first reference (to include all the duties performed in connection therewith) - - - - 2 guineas.
- (ii) For a second or subsequent reference to the same medical referee in the same case - - - - 1 guinea.
- (iii) Where in order to examine the injured workman the medical referee is compelled to travel to a place distant more than two miles from his residence or such other centre as may be prescribed by the Secretary of State, in addition to the above fees—5s. for each mile beyond two, and up to ten, miles distant from such residence or centre, and thereafter 1s. for each mile distant therefrom.

Part III.—Regulations as to References under Schedule I., paragraph (18).

Form D.

14. The medical referee shall, on receipt of a reference duly signed and sealed, fix a time and place for the examination of the workman, and shall send notice accordingly to the workman.

15. Before giving the certificate required by the reference the medical referee shall make a personal examination of the workman.

Form E.

16. The certificate given by the medical referee shall be according to the form prescribed in the schedule to these regulations.

17. The medical referee shall forward his certificate to the registrar from whom he received the reference.

18. The fee to be paid to a medical referee in respect of a reference (to include all the duties performed in connection therewith) under this part of these regulations shall be one guinea.

Part IV.—Regulation as to Remuneration of Medical Referee for sitting as Assessor under Schedule II., paragraph (5).

19. Where a medical referee attends on the summons of the judge for the purpose of sitting with the judge as an assessor, as provided for in paragraph (5) of the second schedule to the Workmen's Compensation Act, 1906, he shall be entitled for such attendance (to include his services as assessor)

to a fee of 3 guineas, and where in order so to attend on the judge, he is compelled to travel to a place distant more than two miles from his residence or such other centre as may be prescribed by the Secretary of State, he shall be entitled, in addition to the above fee, to 5s. for each mile beyond two, and up to ten, miles distant from such residence or centre, and thereafter to 1s. for each mile distant therefrom.

Part V.—Regulations as to References under Schedule II., paragraph (15).

Conditions of Reference.

20. Before making any reference, the committee, arbitrator, or judge shall be satisfied, after hearing all medical evidence tendered by either side, that such evidence is either conflicting or insufficient on some matter which seems material to a question arising in the arbitration, and that it is desirable to obtain a report from a medical referee on such matter.

Form and Mode of Reference.

21. Every reference shall be made in writing and shall state the matter on which the report of the medical referee is required, and the question arising in the arbitration to which such matter seems to be material. Such reference shall be in accordance with the form prescribed in the schedule to these regulations, or as near thereto as may be. Form F.

The reference shall be accompanied by a general statement of the medical evidence given on behalf of the parties; and if such evidence has been given before a committee or an agreed arbitrator, each medical witness shall sign the statement of his evidence, and may add any necessary explanation or correction.

22. On making the reference to the medical referee, the committee, arbitrator or judge shall make an order in the form prescribed in the schedule, directing the injured workman to submit himself for examination by the medical referee. Before making such order they shall inquire whether he is in a fit condition to travel for the purpose of examination, and if satisfied that he is in a fit condition, they shall by the same order direct him to attend at such time and place as the referee may fix. Form G.

It shall be the duty of the injured workman to obey any such order.

If the committee, arbitrator or judge is satisfied that the workman is not in a fit condition to travel, they shall so state in the reference.

23. The reference shall be signed, if made by a committee, by the chairman and secretary of the committee; if made by an agreed arbitrator, by the arbitrator; if made by a judge or an appointed arbitrator, by the judge or arbitrator, or by the registrar of the county court in which the arbitration is pending.

24. A committee or an agreed arbitrator, making a reference, shall, without naming a medical referee, address the reference in general terms to "one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906," and shall forward it to the registrar of the county court of the district in which the case arises,

Duties of Registrar.

25.—(1) In the case of a reference by a committee or agreed arbitrator, the registrar on receiving the reference—

- (a) Shall see that the reference is in accordance with these regulations, and if it is not, shall return it for amendment;
- (b) Shall insert the name of the medical referee proper to be appointed;
- (c) Shall, when the reference is in accordance with these regulations, countersign and seal it, and forward it forthwith to the medical referee.

(2) In the case of a reference by a judge or an appointed arbitrator, the registrar of the court in which the arbitration is pending shall sign (or countersign) and seal it, and forward it forthwith to the medical referee.

26. The registrar, on receiving a report from a medical referee under Regulation 28, shall forthwith file a copy at the court and transmit the report to the committee, arbitrator or judge by whom the reference was made.

If the committee, arbitrator, or judge shall direct that the parties be at liberty to inspect the report, the registrar shall on receiving notice of such direction permit such inspection to be made during office hours, and shall on the application and at the cost of any party furnish him with a copy of the report or allow him to take a copy thereof.

Report of Medical Referee.

Form H.

27. The medical referee shall, on receipt of a reference duly signed and sealed, appoint a time and a place for the examination of the workman, and shall send him notice accordingly.

28. The medical referee shall give his report in writing, and shall forward it to the registrar from whom he received the reference.

29. The committee, arbitrator or judge may, by request signed and forwarded in the same manner as the reference, remit the report to the medical referee for a further statement on any matter not covered by the original reference.

Fees.

30. The following shall be the scale of fees to be paid to the medical referees in respect of references under this part of the regulations:—

- (i) For a first reference, to include examination of the injured workman and written report 2 guineas.
- (ii) For a further statement under regulation 29 on any matter not covered by the original reference 1 guinea.
- (iii) For a second or subsequent reference to the same referee in a further arbitration on the same case, to include examination, if necessary, and written report 1 guinea.

- (iv) Where in order to examine the injured workman the medical referee is compelled to travel to a place distant more than two miles from his residence or such other centre as may be prescribed by the Secretary of State, in addition to the above fees—5s. for each mile beyond two, and up to ten, miles distant from such residence or centre, and thereafter 1s. for each mile distant therefrom.

H. J. Gladstone,

One of His Majesty's Principal
Secretaries of State.

Joseph A. Pease,

J. H. Whitley,

Two of the Lords Commissioners of
His Majesty's Treasury.

24th June, 1907.

SCHEDULE.

FORM A.

*Notice by Medical Referee to Employer or Solicitor signing the application on
Employer's behalf (Schedule I. (15)).*

Workmen's Compensation Act, 1906.

To

I hereby give you notice that in accordance with the Reference made to me by the Registrar of the County Court of holden at , under Schedule I., paragraph (15), of the above-named Act, in the case of [name and address of workman] I propose to examine the said at on the day of at o'clock.

Any statements made or submitted by you [or, if notice is addressed to the solicitor, by the employer] will be considered.

Dated this day of .

(Signed)

Medical Referee.

FORM B.

*Notice by Medical Referee to Workman or Solicitor signing the application
on Workman's behalf (Schedule I. (15)).*

Workmen's Compensation Act, 1906.

To

I hereby give you notice that in accordance with the Reference made to me in your case [or, if notice is addressed to the solicitor, in the case of [name and address of workman]] by the Registrar of the County Court of holden at , under Schedule I., paragraph (15), of the above-named Act, I propose to examine you [or the said] at on the day of at o'clock.

STATUTORY LIABILITY OF EMPLOYERS.

And you are required to submit yourself [or the said is required to submit himself] for examination accordingly.

Any statements made or submitted by you [or, if notice is addressed to the solicitor, by the workman] will be considered.

Dated this day of

(Signed)

Medical Referee.

FORM C.

Certificate of Medical Referee as to condition of Workman and fitness for employment, or as to whether or to what extent incapacity of Workman is due to the accident (Schedule I. (15)).

Workmen's Compensation Act, 1906.

In accordance with the Reference made to me by the Registrar of the County Court of holden at upon the application of [names and addresses of parties] I have on the day of examined the said [name of workman] and I hereby certify as follows:—

1. The said is [describe state of health], and his condition is such that he is [state whether workman is fit for his ordinary or other work, specifying where necessary the kind of work, or whether he is unfit for work of any kind].

2. The incapacity of the said is [state whether or to what extent the incapacity is due to the accident (or, in cases coming within section 8 of the Act, to the disease).]

NOTE.—Either paragraph 1 or paragraph 2 to be filled up, or both to be filled up, according to the terms of the Reference.

Dated this day of

(Signed)

Medical Referee.

FORM D.

Notice by Medical Referee to Workman (Schedule I. (18)).

Workmen's Compensation Act, 1906.

To

I hereby give you notice that in accordance with the Reference made to me in your case by the Registrar of the County Court of holden at under Schedule I., paragraph (18), of the above-named Act, I propose to examine you at on the day of at o'clock, and you are required to submit yourself for examination accordingly.

Dated this day of

(Signed)

Medical Referee.

FORM E.

*Certificate of Medical Referee (Schedule I. (18)).**Workmen's Compensation Act, 1906.*

In accordance with the Reference made to me by the Registrar of the County Court of holden at under Schedule I., paragraph (18), of the above-named Act, I have on the day of examined of [name and address of workman], and I hereby certify that his incapacity is [or is not] likely to be of a permanent nature.

Dated this day of .

(Signed)

Medical Referee.

FORM F.

Reference to a Medical Referee (Schedule II. (15)).

In the matter of the Workmen's Compensation Act, 1906,

and

In the matter of an Arbitration between—

A.B.

Address
Description

Applicant,

and

C.D.

Address
Description

Respondent.

As the case may be { (a) We, a committee representative of and his workmen, and empowered to arbitrate in the matter arising under the Workmen's Compensation Act, between A.B. and C.D. ;
(b) I, , an arbitrator agreed upon by A.B. and C.D. to arbitrate in the matter arising between them under the Workmen's Compensation Act, 1906 ;
(c) I, , Judge of County Courts ;
(d) I, , arbitrator appointed by a Judge of County Courts,

having heard the evidence tendered by both parties, hereby certify that in our [or my] opinion the medical evidence given before us [or me] is conflicting [or insufficient] on a matter which seems to us [or me] to be material to a question arising in the above-mentioned arbitration, and that it is desirable to obtain a report from a medical referee on such matter, as follows:—

(A) On the day of personal injury was [or is alleged to have been] caused to [insert name of injured workman] by accident arising out of and in the course of his employment, under the following circumstances:—

[Here state the facts of the accident as ascertained from the evidence.]

Or, in a case of industrial disease to which the Act applies—

(A) On the day of the said [insert name of injured workman] was, under section 8 of the above-named Act, certified to be disabled by, or suspended from his usual employment on account of his having contracted, a disease to which the said section applies, namely, [name disease].

(B) The matter on which we are [or I am] satisfied that it is desirable to obtain a report is—

(c) Such matter seems to be material to the following question arising in the arbitration, viz. :—

We [or I] therefore appoint [the name must, if the reference is made by a committee or agreed arbitrator, be left in blank to be inserted by the Registrar]

one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to examine the said on the matter specified above, and to report to us [or me].

A statement of the medical evidence given before us [or me] is appended. We are [or I am] satisfied that the said who is now at , is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and place as shall be fixed by the referee [or does not appear to be in a fit condition to travel for the purpose of being examined].

The referee is requested to forward his report to—

The Registrar,
County Court Office,

on or before the day of .

Dated this day of .

(Signed) [For signature of judge or arbitrator.]

or On behalf of the Committee

Chairman } of Committee.
Secretary }

Signature of Registrar and
Seal of Court.

A previous reference was made to a medical referee in this case on the , 19 , and a copy of the report then given is attached.

FORM G.

Order on injured Workman to submit himself for examination by Medical Referee.

[Title as in Reference.]

To of Address.
Description.

TAKE NOTICE—

That the Committee [or arbitrator, or judge] have [or has] appointed one of the medical referees under the Workmen's Compensation Act, 1906, to examine you for the purposes of the above-mentioned arbitration, and to report to them [or him].

You are hereby required to submit yourself for examination by such referee, and to attend for that purpose at such time and place as may be fixed by him [*strike out from "and to attend" when injured workman does not appear to be in a fit condition to travel*].

Dated this day of .

[To be signed in the same manner as Reference.]

FORM II.

Notice by Medical Referee to injured Workman (Schedule II. (15)).

Workmen's Compensation Act, 1906.

To

I hereby give you notice that I have been appointed to examine and report on your case under Schedule II. paragraph (15), of the above-named Act, and that I propose to make such examination at on the day of at o'clock.

(Signed)

Medical Referee.

FORM I.

Medical Referee's Statement of Fees in respect of References under Schedule I. (15).

Number.	Names of Parties.	Date on which Reference received.	Registrar from whom received.	Date and Place of Examination.	Date on which Certificate sent to Registrar.	Whether Certificate as to condition of workman or as to cause of incapacity or both.	Amount of the fees under each of the headings in Regulation 13.			Payments under Regulation 6.
							(i.)	(ii.)	(iii.)	
							£ s. d.	£ s. d.	£ s. d.	£ s. d.
						£				
							Total ... £ s. d.			

I hereby certify that I examined the above-mentioned [name of workman] on at which is distant miles from my residence or prescribed centre.*

(Signed)

* Endorsement to be made on back of statement.

FORM J.

Medical Referee's Statement of Fees in respect of References under Schedule I. (18).

Number.	Name of Workman.	Date on which Reference received.	Registrar from whom received.	Date of examination.	Date on which Certificate sent to Registrar.	Whether incapacity certified to be permanent, or not.	Fees under Regulation 18.	Payments under Regulation 6.
							£ s. d.	£ s. d.
							Total ... £ s. d.	

FORM M.

Record of References, &c. to be kept by Registrar.

County Court Circuit . District . Name of Registrar .

For quarter ended .

Number of Refer- ence.	Names of Parties.	Work- man's Em- ployment.	Date on which Reference forwarded to Medical Referee.	Provision in the Act under which Re- ference is made, and if under Sched. II. (15), by whom made.*	Whether workman directed to attend on Medical Referee, or not.	Medical Referee appointed.	Date and number of previous Reference in same case, if any.
(1.)	(2.)	(3.)	(4.)	(5.)	(6.)	(7.)	(8.)

* Here say whether committee, agreed arbitrator, County Court judge, or appointed arbitrator.

NOTE.—In cases where there is no Reference, but the Medical Referee is summoned to sit as assessor, the Registrar should write a note to that effect across columns 4, 5, and 6.

MASTER AND SERVANT.

Workmen's Compensation Schemes.

REGULATIONS, DATED JULY 1, 1907, MADE BY THE CHIEF REGISTRAR OF FRIENDLY SOCIETIES UNDER THE WORKMEN'S COMPENSATION ACT, 1906.

In pursuance of the powers vested in me by the above-mentioned statute, I, James Duncan Stuart Sim, Chief Registrar of Friendly Societies, hereby make the following Regulations:—

1. Every application for certificate to a scheme under section 3 of the Workmen's Compensation Act, 1906 (in these regulations termed "the Act"), shall be in Form A annexed to these regulations, and shall be accompanied by the documents mentioned in such form. If a scheme includes the workmen of more than one employer a separate application shall be made by each employer.

2. Every application for re-certification, under section 15 of the Act, of a scheme certified under the Workmen's Compensation Act, 1897, and in force on 1st July, 1907, shall be in Form C, and shall be accompanied by the documents mentioned in such form. If a scheme includes the workmen of more than one employer a separate application shall be made by each employer.

3. Every application for certificate to a partial amendment of a scheme shall be in Form D, and shall be accompanied by the documents mentioned in such form. If a scheme includes the workmen of more than one employer a separate application shall be made by each employer.

4. Every application for renewal of certificate to a scheme shall be in Form E, and shall be accompanied by the documents mentioned in such form. If a scheme includes the workmen of more than one employer a separate application shall be made by each employer.

5. Every complaint by or on behalf of workmen shall be as nearly as may be in Form F.

6. The following fees shall be payable in advance for matters to be transacted and for the inspection of documents under the Act:—

For every certificate to a scheme, for the renewal of certificate to a scheme, or for the re-certification (under section 15 of the Act) of a scheme, when the number of workmen in the employment—	£	s.	d.
does not exceed 100	1	0	0
exceeds 100, but does not exceed 500	2	0	0
„ 500 „ „ 1,000	3	0	0
„ 1,000	5	0	0
For every certificate to a partial amendment of a scheme	1	0	0

(In any of the above cases when a scheme includes the workmen of more than one employer the fee will be payable by each employer in accordance with the number of workmen in his employment.)

For every determination as to distribution of funds on expiration or revocation of certificate to a scheme, when the amount for distribution—

does not exceed 500%	5	0	0
exceeds 500%	Not exceeding 1 p.c. of the amount for distribution.		

For every document required to be signed by a Registrar or to bear the seal of the Central Office and not chargeable with any other fee to the Registrar 0 2 6

For every inspection on the same day of documents (whether one or more) in the custody of the Registrar relating to one and the same scheme 0 1 0

For every copy or extract of any document in the custody of the Registrar, not exceeding 216 words 0 1 0

And, if exceeding that number, 4*d.* per folio of 72 words (in addition to the fee, if any, for the signature of a Registrar or seal of the Central Office).

J. D. Stuart Sim,

Chief Registrar of Friendly Societies.

1st July, 1907.

FORM A.

Workmen's Compensation Act, 1906.

Application for Certificate to Scheme.

Full name and address of employer

Nature of employment

Situation of works

This application is made by the undersigned employer and five workmen.

If the scheme includes other employers and their workmen a separate application must be made by each employer and provision for administration, &c., should be made in the scheme.

The total number of workmen in the employment is _____, and at a ballot, taken on _____, 19____ of such workmen voted in favour of the scheme, an abstract of which— with a notification that any workman objecting to the same was at liberty to communicate his views to the Registrar of Friendly Societies, 28, Abingdon Street, London, S.W. [*or as the case may be*—] was posted in a conspicuous position at all the works for a period of at least fourteen days immediately preceding the date of such ballot.

The scheme includes [*or does not include*] other employers and their workmen.

The following is a comparison of the provisions of the scheme with those of the Act:—

SCALE OF COMPENSATION.

	By Act.	By Scheme.
Where death results from the injury—		
(a) If the workman leaves any dependants wholly dependent upon his earnings.	(a) 150 <i>l.</i> to 300 <i>l.</i> , subject to the conditions mentioned in the Act.	(a)
(b) If the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings.	(b) Not exceeding (a).	(b)
(c) If the workman leaves no dependants.	(c) Not exceeding 10 <i>l.</i>	(c)
Where total incapacity for work results from the injury—		
(a) All cases other than those under (b).	(a) Not exceeding 50 per cent. of average earnings and not exceeding 1 <i>l.</i> per week, but no compensation for first week if the incapacity lasts less than two weeks.	(a)
(b) If the workman is under 21 years of age and his average weekly earnings are less than 20 <i>s.</i>	(b) Not exceeding average earnings and not exceeding 10 <i>s.</i> per week, but no compensation for first week if the incapacity lasts less than two weeks.	(b)
Where partial incapacity for work results from the injury.	As for total incapacity, but not exceeding the difference between average earnings before incapacity and average earnings while in receipt of compensation.	

The following are the benefits provided by the scheme other than those of the Act:—

The contribution of the employer to the scheme is to be

The contribution of the workmen to the scheme is to be

The scheme contains provisions enabling a workman to withdraw from the same, but does not contain any obligation upon the workmen to join the scheme as a condition of their hiring.

With this application are sent—

- (a) Two printed copies of the scheme, each stitched in covers and signed by the applicants;
- (b) An actuarial report on the scheme by Mr. _____;
- (c) A statutory declaration in Form B verifying the result of the ballot, &c.;
- (d) A statement showing (1) the views of the general body of the workmen as to the scheme, and (2) how such views were ascertained; and
- (e) The fee of* _____ prescribed by the Regulations.

* See Regulation 6.

The views of the employer are as follows:—

The views of the workmen are as follows:—

} Workmen.

Date _____, 19 ____.

Employer.

If the employer is a body corporate the seal of the corporation should be affixed and duly witnessed in the space provided for the signature.

FORM B.

Workmen's Compensation Act, 1906.

Declaration verifying result of Ballot, &c.

Full name of employer _____

I, _____, of _____, do solemnly and sincerely declare that at a ballot taken on _____, 19 ____, after fourteen days' notice thereof had been given, _____ out of the total number of workmen in the employment of _____ voted in favour of the scheme, application for* _____ which is attached to this declaration, and that on the date of the said ballot the total number of workmen in the said employment was _____.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Signature of declarant

(This declaration is to be made either by the employer, by the manager of the works, or by some other responsible person.)

* Insert "certificate to," "re-certification of," or as the case may be.

† Taken and received before me, one _____ of His Majesty's Justices of the Peace for the County of _____, at _____, in the said County, this _____ day of _____, 19 ____.

† This is to be altered as the case requires where any declaration is made before a Borough Magistrate or Commissioner for Oaths.

FORM C.

*Workmen's Compensation Act, 1906.**Application for re-certification of a Scheme certified under the Act of 1897.*

Full name and address of employer

Nature of employment

Situation of works

This application is made by the undersigned employer and five workmen.

This scheme was certified on _____, under the Workmen's Compensation Act, 1897, the number of the certificate being _____, and was in force on 1st July, 1907.

If the scheme includes other employers and their workmen a separate application must be made by each employer and provision for administration, &c., should be made in the scheme.

The total number of workmen in the employment is _____, and at a ballot, taken on _____, 19____, of such workmen voted in favour of the scheme now submitted, an abstract of which—with a notification that any workman objecting to the same was at liberty to communicate his views to the Registrar of Friendly Societies, 28, Abingdon Street, London, S.W. [*or as the case may be*—was posted in a conspicuous position at all the works for a period of at least fourteen days immediately preceding the date of such ballot.

The scheme includes [*or does not include*] other employers and their workmen.

The following is a comparison of the provisions of the scheme now submitted with those of the scheme as certified and with those of the Act:—

SCALE OF COMPENSATION.

	By Act.	By Scheme.	
		As now submitted.	As already certified.
Where death results from the injury—			
(a) If the workman leaves any dependants wholly dependent upon his earnings.	(a) 150 <i>l.</i> to 300 <i>l.</i> , subject to the conditions mentioned in the Act.	(a)	(a)
(b) If the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings.	(b) Not exceeding (a).	(b)	(b)
(c) If the workman leaves no dependants.	(c) Not exceeding 10 <i>l.</i>	(c)	(c)

	SCALE OF COMPENSATION.		
	By Act.	By Scheme.	
		As now submitted.	As already certified.
Where total incapacity for work results from the injury—			
(a) All cases other than those under (b).	(a) Not exceeding 50 per cent. of average earnings and not exceeding 17. per week, but no compensation for first week if the incapacity lasts less than two weeks.	(a)	(a)
(b) If the workman is under 21 years of age and his average weekly earnings are less than 20s.	(b) Not exceeding average earnings and not exceeding 10s. per week, but no compensation for first week if the incapacity lasts less than two weeks.	(b)	(b)
Where partial incapacity for work results from the injury.	As for total incapacity, but not exceeding the difference between average earnings before incapacity and average earnings while in receipt of compensation.		

The following are the benefits provided by the scheme other than those of the Act:—

The contribution of the employer to the scheme is to be

The contribution of the workmen to the scheme is to be

The scheme contains provisions enabling a workman to withdraw from the same, but does not contain any obligation upon the workmen to join the scheme as a condition of their hiring.

With this application are sent—

- (a) Two printed copies of the scheme, each stitched in covers and signed by the applicants;
- (b) An actuarial report on the scheme by Mr. _____;
- (c) A statutory declaration in Form B verifying the result of the ballot, &c.;
- (d) A statement showing (1) the views of the general body of the workmen as to the scheme, and (2) how such views were ascertained; and
- (e) The fee of* _____ prescribed by the Regulations.

* See Regulation 6.

The views of the employer are as follows :—

The views of the workmen are as follows :—

If the employer is a body corporate the seal of the corporation should be affixed and duly witnessed in the space provided for the signature.

} Workmen.
}
Employer.

Date , 19 .

FORM D.

Workmen's Compensation Act, 1906.

Application for Certificate to partial amendment of Scheme.

Full name and address of employer

Number of scheme

Date of certificate to scheme , 19 .

Application for certificate to an amendment of the above scheme is made by the undersigned employer and five workmen.

With this application are sent—

- (a) A printed copy of the scheme as certified, marked to show where the alterations occur and what they are ;
- (b) Two printed copies of the amendment each signed by the applicants ;
- (c) A statement showing (1) the views of the general body of workmen, and (2) how such views were ascertained ; and
- (d) The fee of 1*l.* prescribed by the Regulations.

The views of the general body of workmen are as follows :—

} Workmen.
}
Employer.

If the employer is a body corporate the seal of the corporation should be affixed and duly witnessed in the space provided for the signature.

Date , 19 .

FORM E.

Workmen's Compensation Act, 1906.

Application for renewal of certificate to Scheme.

Full name and address of employer

Nature of employment

Situation of works

This application is made by the undersigned employer and five workmen.

The total number of workmen in the employment is , and the number contracting out under the scheme is .

The scheme includes [or does not include] other employers and their workmen.

[If any modification of the scheme is now proposed, the following comparative statement should be filled in].

If the scheme includes other employers and their workmen a separate application must be made by each employer and provision for administration, &c. should be made in the scheme.

The following is a comparison of the provisions of the scheme now submitted with those of the scheme as certified and with those of the Act :—

	SCALE OF COMPENSATION.		
	By Act.	By Scheme.	
		As certified.	Proposed alterations.
Where death results from the injury—			
(a) If the workman leaves any dependants wholly dependent upon his earnings	(a) 150% to 300%, subject to the conditions mentioned in the Act.	(a)	(a)
(b) If the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings.	(b) Not exceeding (a).	(b)	(b)
(c) If the workman leaves no dependants.	(c) Not exceeding 10%.	(c)	(c)
Where total incapacity for work results from the injury—			
(a) All cases other than those under (b).	(a) Not exceeding 50 per cent. of average earnings and not exceeding 1% per week, but no compensation for first week if the incapacity lasts less than two weeks.	(a)	(a)
(b) If the workman is under 21 years of age and his average weekly earnings are less than 20s.	(b) Not exceeding average earnings and not exceeding 10s. per week, but no compensation for first week if the incapacity lasts less than two weeks.	(b)	(b)
Where partial incapacity for work results from the injury.	As for total incapacity, but not exceeding the difference between average earnings before incapacity and average earnings while in receipt of compensation.		
Benefits other than those of the Act			
Contributions of employer			
Contributions of workmen			

With this application are sent—

- (a) Two printed copies of the scheme, each stitched in covers and signed by the applicants ;
- (b) An actuarial report on the working of the scheme during the pre-
ceding five years, by Mr. ;
- *(c) A statement showing (1) the views of the general body of the work-
men as to the scheme, and (2) how such views were ascertained ;
- and
- (d) The fee off prescribed by the Regulations.

* The Regis-
trar may
require a
ballot if he
thinks fit.
+ See Regula-
tion 6.

The views of the employer are as follows :—

The views of the workmen are as follows :—

If the employer
is a body cor-
porate the seal
of the corpora-
tion should be
affixed and duly
witnessed in the
space provided
for the signa-
ture.

} Workmen.
Employer.

Date , 19 .



FORM F.

Workmen's Compensation Act, 1906.

Form of Complaint of Workmen.

Scheme No.

To THE REGISTRAR OF FRIENDLY SOCIETIES,
28, ABINGDON STREET, LONDON, S.W.

COMPLAINT is hereby made by or on behalf of the workmen of
(the employer under the above-mentioned scheme) :—

- 1°. That the benefits conferred by the scheme no longer conform to the
conditions stated in sub-section (1) of section 3 of the above-
mentioned Act in the following respects :—
- or,*
- 2°. That the provisions of the scheme are being violated in the following
respects :—
- or,*
- 3°. That the scheme is not being fairly administered in the following
respects :—
- or,*
- 4°. That the following reasons exist for revoking the certificate to the
scheme :—

You are requested to examine into this complaint, and if satisfied that
good cause exists for it, to revoke the certificate to the scheme unless the
cause of complaint is removed.

The undersigned have been authorised in the following manner to make
the complaint on behalf of themselves and the other workmen of the said
employer :—

} Workmen.

Date , 19 .

STATUTORY RULES AND ORDERS, 1908.

No. 17.

REGULATIONS, DATED JANUARY 15, 1908, MADE BY THE SECRETARY OF STATE UNDER SECTION 12 OF THE WORKMEN'S COMPENSATION ACT, 1906, AS TO RETURNS TO BE FURNISHED EACH YEAR BY EMPLOYERS IN CERTAIN INDUSTRIES WITH RESPECT TO THE COMPENSATION PAID UNDER THE ACT DURING THE PREVIOUS YEAR.

In pursuance of the powers conferred on me by section 12 of the Workmen's Compensation Act, 1906, I hereby make the following regulations:—

1. The industries to which section 12 of the Act shall apply shall be the industries specified in the first Schedule to these regulations.
2. The date on or before which in every year the return required under the said section shall be sent to the Secretary of State shall be the first day of March, commencing with the year 1909.
3. The return shall furnish the particulars set out in the second schedule to these regulations.

H. J. Gladstone,
One of His Majesty's Principal
Secretaries of State.

SCHEDULE I.

Mining.

Quarrying.

Working of railways (not being railways laid on public roads) authorised by special Act or by Orders or Certificates made in pursuance of General Acts and having statutory force, including stations and sidings connected with such railways and belonging to the owners thereof.

Any industry being carried on in any factory to which the Factory and Workshop Act, 1901, applies.

The business of a harbour, dock, wharf or quay.

Constructional work (includes the construction of railways, tramways, canals, harbours or docks, bridges, tunnels, waterworks, sewers, roads, and other works of engineering, but does not include construction of buildings).

Shipping (excluding sailing-vessels in the sea-fishing service).

SCHEDULE II.

FORM OF RETURN.

Workmen's Compensation Act, 1906, Section 12.

The employer is required to send to the Home Office on or before the first day of March, 190 , a return showing the following particulars as to the

compensation paid by him under the Workmen's Compensation Act, 1906, during the year 190 .

In default of so doing he will be liable to a penalty.

The employer's attention is specially directed to the following points :—

- (1) The figures furnished by the individual employer will not be published, but will be treated as strictly confidential. Only *totals* for industries will be published.
- (2) The return should *not* include any particulars with regard to (a) compensation paid under a contracting-out scheme certified by the Chief Registrar of Friendly Societies under the Workmen's Compensation Act, or (b) damages under the Employers' Liability Act, or at Common Law, or (c) payments made under section 34 of the Merchant Shipping Act, 1906.
- (3) In calculating the figures as to compensation paid, the employer should take into account only the amount actually paid by him (or by an Employers' Association or Mutual Indemnity or other Insurance Company on his behalf) to the worker. In particular he should not take into account either (a) costs incurred by him in connection with legal proceedings or otherwise, or (b) amounts received by him by way of indemnity from third parties or under sub-section (1) (c) (iii.) of section 8 (industrial diseases) of the Act.
- (4) An employer insured against his liabilities under the Act in a Mutual Indemnity or other Insurance Company, or belonging to an Association of Employers which deals on behalf of its members with claims for compensation, will not be required to make a separate return, provided the Company in which he is insured, or the Association to which he belongs, is under an arrangement with the Home Office to make returns on behalf of the employers insured or represented by it. Otherwise he must make the return, obtaining any particulars required from the Company or Association.
- (5) In filling up the form it is particularly requested that no blanks may be left. Columns in which there are no entries to be made should have *N/L* written across them.

N.B.—A separate return should be made for EACH of the following industries :—

- (1) Factories, (2) Mines, (3) Quarries, (4) Railways, (5) Docks,
- (6) Steamships, (7) Sailing Vessels, (8) Constructional Work.

Name of Employer

Address of Works (or Office)

Industry (and, in case of factories, nature of work carried on)

* Approximate average Number of Persons employed to (Male
whom the Act applies (Female

* In case of shipowners the gross tonnage of the vessels will also require to be stated.

ACCIDENTS.

A.—Cases of death (whether compensation paid into Court or to legal personal representative).

—	No. of cases in which compensation paid during 190 .	Total amount of compen- sation paid during 190 .
(a) Cases where there were persons wholly dependent*		
(b) Cases where there were only persons partly dependent		
(c) Cases where only medical and burial † expenses paid		
Total		

* Including cases in which compensation paid *both* to persons wholly *and* to persons partly dependent.

† Expenses incurred under section 34 of the Merchant Shipping Act, 1906, should not be included.

B.—Cases of persons temporarily or permanently disabled.

I. Total Figures for 190 .

—	No. of cases in which compensation paid during 190 .	Total amount of compen- sation paid during 190 .
Cases continued from previous years		
Cases in which the first payment of compensation was made during 190		
Total		

II. Particulars as to Duration of Compensation.

State in following Table how many cases were terminated during 190 after payment (whether in 190 or in previous years) of less than 2 weeks' compensation, of 2 weeks' compensation but less than 3, and so on.

(Cases terminated by payment of a lump sum should *not* be included.)

Less than 2 weeks.	2 weeks and less than 3.	3 weeks and less than 4.	4 weeks and less than 13.	13 weeks and less than 26.	26 weeks and over.

STATUTORY LIABILITY OF EMPLOYERS.

IIa. Additional Particulars as to Cases not terminated at end of 190 which had lasted more than 1 year.

Over 1 year and less than 2.	2 years and less than 5.	5 years and less than 10.	10 years and over.

III. Particulars as to non-fatal Cases settled by payment of Lump Sums.*

	Number of cases.	Total amount paid.
Cases settled by payment of lump sum without previous weekly payments....		
Cases settled by payment of lump sum after previous weekly payments:—		
(i) Where weekly payments had lasted less than 26 weeks		
(ii) Where weekly payments had lasted 26 weeks and over		
Total.....		

* Cases in which the lump sum was only the aggregate of a number of separate weekly payments already due should not be entered in this Table, but in Table II.

INDUSTRIAL DISEASES.

A.—Cases of death (whether compensation paid into Court or to legal personal representative).

	No. of cases in which compensation paid during 190 .	Total amount of compensation paid during 190 .
(a) Cases where there were persons wholly dependent*		
(b) Cases where there were only persons partly dependent.....		
(c) Cases where only medical and burial † expenses paid		
Total		

* Including cases in which compensation paid both to persons wholly and to persons partly dependent.

† Expenses incurred under section 34 of the Merchant Shipping Act, 1906, should not be included.

B.—Cases of persons temporarily or permanently disabled.

I. Total Figures for 190 .

	No. of cases in which compensation paid during 190 .	Total amount of compen- sation paid during 190 .
Cases continued from previous years		
Cases in which the first payment of compensation was made during 190		
Total		

II. Particulars as to Duration of Compensation.

State in following Table how many cases were terminated during 190 after payment (whether in 190 or in previous years) of less than 2 weeks' compensation, of 2 weeks' compensation but less than 3, and so on.

(Cases terminated by payment of a lump sum should *not* be included.)

Less than 2 weeks.	2 weeks and less than 3.	3 weeks and less than 4.	4 weeks and less than 13.	13 weeks and less than 26.	26 weeks and over.

IIa. Additional Particulars as to Cases not terminated at end of 190 which had lasted more than 1 year.

Over 1 year and less than 2.	2 years and less than 5.	5 years and less than 10.	10 years and over.

STATUTORY LIABILITY OF EMPLOYERS.

III. Particulars as to non-fatal Cases settled by payment of Lump Sums.*

	Number of cases.	Total amount paid.
Cases settled by payment of lump sum without previous weekly payments		
Cases settled by payment of lump sum after previous weekly payments:—		
(i) Where weekly payments had lasted less than 26 weeks		
(ii) Where weekly payments had lasted 26 weeks and over		
Total		

* Cases in which the lump sum was only the aggregate of a number of separate weekly payments already due should not be entered in this Table but in Table II.

Further Particulars as to Cases of Industrial Disease.

NAME OF DISEASE.	Number of cases in which compensation paid.	
	Continued from previous years.	Arising during 190 .
Anthrax		
Lead poisoning or its sequelæ		
Mercury poisoning or its sequelæ		
Phosphorus poisoning or its sequelæ		
Arsenic poisoning or its sequelæ		
Ankylostomiasis		
Poisoning by nitro- and amido-derivatives of benzene (dinitro-benzol, anilin, and others) or its sequelæ		
Poisoning by carbon-bisulphide or its sequelæ..		
Poisoning by nitrous fumes or its sequelæ		
Poisoning by nickel carbonyl or its sequelæ ..		
Poisoning by <i>Goniodia Kamassi</i> (African box-wood) or its sequelæ		
Chronic ulceration or its sequelæ		
Eczematous ulceration of the skin produced by dust, or caustic or corrosive liquids, or ulceration of the mucous membrane of the nose or mouth produced by dust		
Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye, due to pitch, tar, or tarry compounds		
Scrotal epithelioma (chimney-sweeps' cancer)..		
Nystagmus		
Glanders		
Compressed air illness or its sequelæ		
Subcutaneous cellulitis of the hand (beet hand)		
Subcutaneous cellulitis over the patella (miners' beat knee)		
Acute bursitis over the elbow (miners' beat elbow)		
Inflammation of the synovial lining of the wrist joint and tendon sheaths		

RULES OF SUPREME COURT, 1883.

ORDER LVIII.

20. The following provisions shall apply to appeals to the Court of Appeal from decisions of judges of the County Courts on questions of law under the Workmen's Compensation Act, 1897 (*a*), and appeals under the Agricultural Holdings Act, 1900:—

Appeals under Workmen's Compensation Act, 1897, and Agricultural Holdings Act, 1900.

- (a) Every such appeal shall be by notice of motion in accordance with Order LIX., rule 10; and such notice of motion shall be served and the appeal set down under Order LVIII., rule 8, within the time limited by Order LIX., rule 12.
- (b) It shall be the duty of the party appealing to apply to the judge of the County Court for a signed copy of the note made by him of any question of law raised before him, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision on the question or matter submitted to him, and to furnish such copy for the use of the Court of Appeal; and such copy shall be used and received at the hearing of the appeal. If such notes are not produced the Court of Appeal shall have power to hear and determine the appeal upon any other evidence or statement of what occurred before the judge of the County Court which the Court of Appeal may deem sufficient.
- (c) Order LIX., rules 14 and 16, shall apply to any such appeal, with the substitution of the Court of Appeal for the High Court.
- (d) Subject to the foregoing provisions, the rules for the time being in force with respect to appeals from the High Court to the Court of Appeal shall, so far as practicable, apply to and govern appeals under the said Act to the Court of Appeal. (*R.S.C., August, 1898, as amended by R.S.C., November, 1900.*)

ORDER LIX.

10. Every such appeal shall be by notice of motion, and no rule *nisi* or order to show cause shall be necessary. The notice of motion shall state the grounds of the appeal, and whether all or part only of the judgment, order, or finding is complained of. The notice of motion shall be an eight days' notice and shall be served on every party directly affected by the appeal entered. (*R.S.C., December, 1885.*)

Appeal to be by notice of motion.

12. The notice of motion shall be served and the appeal entered within twenty-one days from the date of the judgment, order, or finding complained of; such period shall be calculated from the time at which the judgment or

Time for service of notice of motion.

(*a*) Now, 1906. See Workmen's Compensation Rules, 1907, r. 71, at p. 730, *supra*.

order is signed, entered, or otherwise perfected, or from the time at which the finding or any refusal is made or given. (*R.S.C., December, 1885.*)

When appeal
may operate
as a stay of
proceedings.

14. The appeal shall not operate as a stay of proceedings under the decision appealed from unless the inferior Court shall so order, or unless within ten days after the decision a deposit shall be made of or security given to the satisfaction of such inferior Court for a sum to be fixed by the said Court, not exceeding the amount of the money or the value of the property affected by the judgment, order, or finding appealed from. (*R.S.C., December, 1885.*)

Powers of
High Court.

16. The High Court shall have power to extend the time for appealing, or to amend the grounds of appeal, or to make any other order, on such terms as the Court shall think just, to ensure the determination on the merits of the real questions in controversy between the parties. (*R.S.C., December, 1885.*)

COAL MINES (WEIGHING OF MINERALS) ACT, 1905.

(5 EDW. 7, c. 9.)

*An Act to amend the Provisions of the Coal Mines Regulation Act, 1887,
which relate to the Weighing of Minerals.*

1.—(1) The power conferred by the principal Act on the persons employed in a mine and paid according to the weight of the mineral gotten by them, to appoint a check-weigher, shall include power to appoint a deputy to act in the absence of the check-weigher for reasonable cause, and the expression “check-weigher” when used in the principal Act and in this Act, shall include any such deputy check-weigher during any such absence as aforesaid.

Amendments
of 50 & 51
Vict. c. 58,
s. 13, as to
check of
weighers (a).

(2) A statutory declaration, made by the person who presided at a meeting for the purpose of appointing a check-weigher or deputy check-weigher, to the effect that he presided at that meeting, and that the person named in the declaration was duly appointed check-weigher or deputy check-weigher, as the case may be, by that meeting, shall be forthwith delivered to the owner, agent, or manager of the mine, and shall be *primâ facie* evidence of that appointment.

(3) Where the check-weigher or deputy check-weigher was appointed by a majority, ascertained by ballot, of the persons employed in the mine, and paid according to the mineral gotten, the declaration shall so state, and if he was not so appointed, then it shall state the names of the persons by whom or on whose behalf the check-weigher or deputy check-weigher was appointed. Where a check-weigher or deputy check-weigher is appointed by such a majority as aforesaid, he shall be deemed to be appointed on behalf of all the persons employed in the mine who are entitled to appoint him.

(4) The facilities to be afforded to a check-weigher, under section thirteen of the principal Act (a), shall include provision for a check-weigher of a shelter from the weather, containing the number of cubic feet requisite for two persons, a desk or table at which the check-weigher may write, and a sufficient number of weights to test the weighing machine.

(5) When a check-weigher or deputy check-weigher is appointed by a majority, ascertained by ballot, of the persons employed at the mine, and paid according to the mineral gotten, he shall not be removed by the persons employed in the mine except by a majority, ascertained by ballot, of the persons employed and paid as aforesaid at the time of the removal.

2.—(1) For the purposes of the principal Act and of this Act, the persons who are entitled, under section thirteen of the principal Act (a), to appoint

Amendments
as to persons
who appoint

(a) See p. 388, *supra*.

and pay
check-
weighers.

a check-weigher, and from whom he is entitled, under section fourteen of the principal Act (*b*), to recover his wages or recompense, shall be deemed to include not only the persons in charge of the working places, but also all holers, fillers, trammers and other persons who are paid according to the weight of the mineral gotten.

(2) Where there are persons employed in a mine who are employed by a contractor who is himself paid according to weight of mineral gotten, such persons, if they are either in charge of the working places or are holers, fillers, trammers, or brushers, shall, notwithstanding that they are paid by the contractor and otherwise than in accordance with the weight of mineral gotten, be deemed to be included among those who are entitled to appoint a check-weigher, and from whom he is entitled as aforesaid to recover wages or recompense; but the proportion of such wages or recompense recoverable in respect of such persons shall be paid by the contractor who employs them, and recoverable by the check-weigher from him alone.

(3) The wages or recompense which a check-weigher may recover under section fourteen of the principal Act (*b*), shall include expenses properly incurred by him in carrying out his work under the principal Act.

Notice of
intention to
appoint check-
weigher.

3. All persons who are entitled, by the principal Act or this Act, to appoint a check-weigher or deputy check-weigher shall have due notice given to them of the intention to appoint a check-weigher or deputy check-weigher, by a notice posted at the pit-head or otherwise, specifying the time and place of the meeting, and have the same facilities given to each of them for the purpose of recording their votes, either by ballot or otherwise, in such appointment.

Construction
and short
title.

4.—(1) This Act shall be construed as one with the principal Act.

(2) This Act may be cited as the Coal Mines (Weighing of Minerals) Act, 1905, and the Coal Mines Regulation Acts, 1887 to 1896, and the Coal Mines Regulation Act (1887) Amendment Act, 1903, and this Act may be cited collectively as the Coal Mines Regulation Acts, 1887 to 1905.

(*b*) See p. 390, *supra*.

SHIPOWNERS' NEGLIGENCE (REMEDIES) ACT, 1905.

(5 Edw. 7, c. 10.)

An Act to enlarge the Remedies of Persons injured by the Negligence of Shipowners(a).

1.—(1) If it is alleged that the owners of any ship are liable to pay damages in respect of personal injuries, including fatal injuries, caused by the ship, or sustained on, in, or about the ship, in any port or harbour in the United Kingdom, in consequence of the wrongful act, neglect, or default of the owners of the ship, or the master or officers or crew thereof, or any other person in the employment of the owners of the ship, or of any defect in the ship, or its apparel or equipment, and at any time that ship is found in any port or river of England or Ireland, or within three miles of the coast thereof, a judge of any Court of record in England or Ireland may, upon its being shown to him by any person applying in accordance with rules of Court that the owners are probably liable to pay damages in respect of such injuries, and that none of the owners reside in the United Kingdom, issue an order, directed to any officer of customs, or other officer named by the judge, requiring him to detain the ship until such time as the owners, agent, master, or consignee thereof have made satisfaction in respect of the injuries, or have given security, to be approved by the judge, to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of the injuries, and to pay all costs and damages that may be awarded thereon; and any officer of customs, or other officer to whom the order is directed, shall detain the ship accordingly.

Enlargement of remedy by action for injuries caused by negligence of a shipowner.

(2) In any legal proceeding in relation to such injuries as aforesaid, the person giving security shall be made defendant, and shall be stated to be the owner of the ship which has caused the injuries, or on, in, or about which the injuries were sustained, and the production of the order of the judge, made in relation to the security, shall be conclusive evidence of the liability of the defendant to the proceeding.

(3) Section six hundred and ninety-two of the Merchant Shipping Act, 1894, shall apply to the detention of a ship under this Act as it applies to the detention of a ship under that Act, and the expressions "port" and "harbour" have the same meaning as in that Act, and if the owner of a ship is a corporation it shall for the purposes of this Act be deemed to reside

57 & 58 Vict. c. 60.

(a) See sect. 11 of the Workmen's Compensation Act, 1906, and the note there, at p. 673, *supra*.

in the United Kingdom, if it has an office in the United Kingdom at which service of writs can be effected.

60 & 61 Vict.
c. 37.

(4) The words " person applying " in this section shall include an employer who has paid compensation, or against whom a claim for compensation has been made, under the Workmen's Compensation Act, 1897 (*b*), as amended by any subsequent enactment, if he shows the judge that he probably is, or will become, entitled to be indemnified under that Act (*c*), and in such case this section shall apply as if the employer were a person claiming damages in respect of personal injuries.

Commence-
ment and
short title.

2. This Act shall come into operation on the first day of January, nineteen hundred and six, and may be cited as the Shipowners' Negligence (Remedies) Act, 1905.

(*b*) Now, 1906.

(*c*) See sect. 6, sub-sect. (2).

NOTICE OF ACCIDENTS ACT, 1906.

(6 EDW. 7, c. 53.)

An Act to amend the Law relating to Returns and Notifications of Accidents in Mines, Quarries, Factories, and Workshops, and under the Notice of Accidents Act, 1894.

1. Section thirty-three of the Coal Mines Regulation Act, 1887 (*a*), and section one of the Metalliferous Mines Regulation Act, 1875 (*b*) (both in its application to metalliferous mines and in its application to quarries) (*c*), shall be read as if the matters to be specified in the returns to be given under those sections respectively included a statement containing such particulars as the Secretary of State may prescribe of all accidents which occurred in or about the mine or quarry during the year to which the return relates, and disabled for more than seven days any person employed in or about the mine or quarry from working at his ordinary work.

Annual returns of accidents in mines and quarries.
50 & 51 Vict. c. 58.
38 & 39 Vict. c. 39.

2.—(1) Section thirty-five of the Coal Mines Regulation Act, 1887 (*d*), shall be read as if the following sub-section were substituted for sub-section (1) of that section :—

Notices of accidents in mines and quarries.

“(a) Where, in or about any mine to which this Act applies whether above or below ground, any accident occurs which either—

“(i) causes loss of life to any person employed in or about the mine; or

“(ii) causes any fracture of the head or of any limb, or any dislocation of a limb, or any other serious personal injury to any person employed in or about the mine; or

“(iii) is caused by any explosion of gas or coal dust, or any explosive, or by electricity, or by overwinding, or by any other such special cause as the Secretary of State specifies by order, and causes any personal injury whatever to any person employed in or about the mine,

the owner, agent, or manager of the mine shall forthwith send notice in writing of the accident, and of any loss of life or personal injury caused thereby, to the inspector of the district, in such form and accompanied by such particulars as the Secretary of State prescribes.”

(2) The same sub-section shall be substituted for so much of section eleven of the Metalliferous Mines Act, 1872 (*e*), as is repealed by this Act, both as

35 & 36 Vict. c. 77.

(a) See p. 397, *supra*, and the note there.

(b) See p. 383, *supra*.

(c) See p. 433, note (*p*).

(d) See p. 399, and note there.

(e) See p. 366, *supra*, and note there.

respects the application of that section to metalliferous mines and as respects its application to quarries (*f*).

Application to railway sidings in connection with mines and quarries. 63 & 64 Viet. c. 27.

3. Where any line or siding, not being part of a railway within the meaning of the Railway Employment (Prevention of Accidents) Act, 1900 (*g*), is used in connection with a mine or quarry, the provisions of the Coal Mines Regulation Acts, 1887 to 1896 (*h*), and of the Metalliferous Mines Regulation Acts, 1872 and 1875 (*i*), as respectively amended by this Act (*k*) with respect to returns and notification of accidents shall have effect, so far as regards accidents to persons employed by or on behalf of the owner of the mine or quarry, as if the line or siding were part of the mine or quarry.

Notices of accidents in factories and workshops.

4.—(1) Where any accident occurs in a factory or workshop which is either—

- (a) an accident causing loss of life to a person employed in the factory or workshop ; or
- (b) an accident due to any machinery moved by mechanical power, or to molten metal, hot liquid, explosion, escape of gas or steam, or to electricity, and so disabling any person employed in the factory or workshop as to cause him to be absent throughout at least one whole day from his ordinary work ; or
- (c) an accident due to any other special cause which the Secretary of State may specify by order, and causing such disablement as aforesaid ; or
- (d) an accident disabling for more than seven days a person employed in the factory or workshop from working at his ordinary work,

written notice of the accident, in such form and accompanied by such particulars as the Secretary of State prescribes, shall forthwith be sent to the inspector of the district and also in the case of the accidents mentioned in paragraphs (a) and (b) of this sub-section, and (if the order of the Secretary of State specifying the special cause so requires) of accidents mentioned in paragraph (c), to the certifying surgeon (*l*) of the district.

(2) If any accident causing disablement is notified under this section, and after notification thereof results in the death of the person disabled, notice in writing of the death shall be sent to the inspector as soon as the death comes to the knowledge of the occupier of the factory or workshop.

(3) If any notice with respect to an accident in a factory or workshop required to be sent by this section is not sent as so required, the occupier of the factory or workshop shall be liable to a fine not exceeding ten pounds.

(4) If any accident to which this section applies occurs to a person employed in a factory or workshop the occupier of which is not the actual employer of the person killed or injured, the actual employer shall immediately report the same to the occupier, and in default shall be liable to a fine not exceeding five pounds.

(5) The foregoing provisions of this section shall be substituted for section nineteen of the Factory and Workshop Act, 1901 (*m*).

(*f*) See p. 433, note (*k*).

(*g*) See sect. 13, sub-sect. (3), and sect. 16, at p. 567, *supra*.

(*h*) See pp. 397, 399, *supra*.

(*i*) See pp. 366, 383, *supra*. As to

Quarries, p. 432, *supra*.

(*k*) See sects. 1 and 2.

(*l*) See p. 528, *supra*.

(*m*) See p. 478, *supra*, and the note there.

5.—(1) If the Secretary of State considers that, by reason of the risk of serious injury to persons employed, it is expedient that notice should be given under this Act in every case of any special class of explosion, fire, collapse of buildings, accidents to machinery or plant, or other occurrences in a mine or quarry, or in a factory or workshop, including any place which for the purpose of the provisions of the Factory and Workshop Act, 1901, with respect to accidents is a factory or workshop (*n*), or is included in the word “factory” or “workshop” (*n*), or is part of a factory or workshop (*n*), the Secretary of State may by order extend the provisions of this Act requiring notice of accidents to be given to an inspector to any such class of occurrences, whether personal injury or disablement is caused or not, and, where any such order is made, the provisions of this Act shall have effect as extended by the order.

Power to extend provisions as to notice of accidents to dangerous occurrences.

(2) The Secretary of State may by any such order allow the required notice of any occurrence to which the order relates, instead of being sent forthwith, to be sent within the time limited by the order.

By order (St. R. & O. 1906, No. 933; St. R. & O. 1906, p. 174) this section has been extended in factories and workshops to—

“All cases of—

“bursting of a revolving vessel, wheel, emery wheel, or grindstone moved by mechanical power;

“breaking of a rope, chain, or other appliance used in raising or lowering persons or goods by aid of mechanical power;

“fire affecting any room in which persons are employed and causing complete suspension of ordinary work therein for not less than twenty-four hours.”

In mines and quarries it has been extended (St. R. & O. 1906, No. 934; St. R. & O. 1906, p. 490) to—

“all cases of ignition of gas or dust below ground other than ignitions of gas in a safety lamp;

“all cases of fire below ground;

“all cases of breakage of ropes, chains, or other gear by which men are lowered or raised;

“all cases of overwinding cages while men are being lowered or raised;

“all cases of inrush of water from old workings.”

6. Section one of the Notice of Accidents Act, 1894, shall be read as if the words “cause him to be absent throughout at least one whole day from his ordinary work” were substituted for the words “prevent him on any one of the three working days next after the occurrence of the accident from being employed for five hours on his ordinary work” in sub-section (1) of that section (*o*).

Notice of accidents under 57 & 58 Vict. c. 28.

7.—(1) The enactments mentioned in the schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

Repeal, construction and short title.

(2) This Act may be cited as the Notice of Accidents Act, 1906, and shall come into operation on the first day of January nineteen hundred and seven, but the Secretary of State may appoint a later date (not being later than the

(*n*) See sects. 104—106 of the Factory and Workshop Act, 1901, at p. 518, *supra*.

(*o*) See p. 433, *supra*, and note there.

first day of January one thousand nine hundred and eight) for any special provision of the Act to come into operation, and, if a later date is so appointed, that special provision shall not come into operation until that later date.

SCHEDULE.

Section 7.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
35 & 36 Vict. c. 77.	The Metalliferous Mines Regulation Act, 1872.	Section eleven from the beginning to "injured respectively."
50 & 51 Vict. c. 58.	The Coal Mines Regulation Act, 1887.	Section thirty-five, sub-section one.
57 & 58 Vict. c. 28.	The Notice of Accidents Act, 1894.	Section one, sub-section three.
63 & 64 Vict. c. 27.	The Railway Employment (Prevention of Accidents) Act, 1900.	Section thirteen, sub-section three.
1 Edw. 7, c. 22.	The Factory and Workshop Act, 1901.	Section nineteen.

FACTORY AND WORKSHOP ACT, 1907.

(7 EDW. 7, c. 39.)

An Act to amend the Factory and Workshop Act, 1901, with respect to Laundries, and to extend that Act to certain Institutions and to provide for the inspection of certain premises.

LAUNDRIES.

1. The Factory and Workshop Act, 1901 (which Act, as amended by any subsequent enactment, including this Act, is hereinafter referred to as the principal Act), shall, subject to the provisions of this Act, apply to laundries as if at the end of Part II. of the Sixth Schedule to that Act, enumerating non-textile factories and workshops, the following paragraph were added :—

Application of
1 Edw. 7,
c. 22, to
laundries.

“(29) Laundries carried on by way of trade or for the purpose of gain, or carried on as ancillary to another business or incidentally to the purposes of any public institution” (a).

2.—(1) In laundries, other than laundries ancillary to a business carried on in any premises which, apart from the provisions of this Act, are a factory or workshop—

Hours of
employment
of women and
young persons
in laundries.

- (a) The period of employment of women may on any three days in the week, other than Saturday, begin at six o'clock in the morning and end at seven o'clock in the evening, or begin at seven o'clock in the morning and end at eight o'clock in the evening, or begin at eight o'clock in the morning and end at nine o'clock in the evening :

Provided that a corresponding reduction is made in the periods of employment on other days of the week, so that the total number of hours of the periods of employment of women, including the intervals allowed for meals, shall not exceed sixty-eight in any one week ;

- (b) Where the occupier of a laundry so elects, the following provisions shall apply to the laundry in lieu of the provisions of the last preceding paragraph :—

The period of employment of women may, on not more than four days, other than Saturday, in any one week, and on not more than sixty days in any calendar year, begin at six o'clock in the morning and end at seven o'clock in the evening, or begin at seven o'clock in the morning and end at eight o'clock in the evening, or begin at eight o'clock in the morning and end at nine o'clock in the evening ;

- (c) Different periods of employment may be fixed for different days of the week.

(a) See sect. 103 of the Factory and Workshop Act, 1901, at p. 517, *supra*, and note there.

(2) The foregoing provisions of this section shall be deemed to be special exceptions within the meaning of section sixty of the principal Act (*b*), but it shall not be lawful for the occupier of a laundry to change from the system of employment under the above paragraph (a) to the system of employment under the above paragraph (b), or vice versa, oftener than once a year. The entry required to be made in the prescribed register by sub-section four of the said section sixty (*b*) as so applied shall, in the case of overtime employment under paragraph (b), be made before the commencement of the overtime employment on each day on which it is intended that there should be such employment, and, in reckoning the sixty days for the purposes of paragraph (b), every day on which any woman had been employed overtime shall be taken into account.

(3) Subject as aforesaid, the provisions of the principal Act as to hours of employment shall apply to laundries.

Special regulations to be complied with in laundries.

3. In every laundry—

- (a) If mechanical power is used, a fan or other efficient means shall be provided, maintained, and used for regulating the temperature in every ironing room, and for carrying away the steam in every washhouse;
- (b) All stoves for heating irons must be sufficiently separated from any ironing room or ironing table, and gas irons emitting any noxious fumes must not be used; and
- (c) The floors must be kept in good condition and drained in such manner as will allow the water to flow off freely.

A laundry in which there is a contravention of any of these provisions shall be deemed to be a factory or workshop not kept in conformity with the principal Act (*c*).

Application of provisions as to domestic workshops.

4. Sub-section (2) of section one hundred and fourteen of the principal Act (*d*) (which provides that certain domestic workshops are not to be deemed workshops within the meaning of that Act) shall apply to laundries as if for the words “the altering, repairing, ornamenting, or finishing of any article” there were substituted the words “the altering, repairing, ornamenting, washing, cleaning, or finishing of any article.”

INSTITUTIONS.

Application of Factory and Workshop Acts to certain institutions.

5.—(1) Where in any premises forming part of an institution carried on for charitable or reformatory purposes, and not being premises subject to inspection by or under the authority of any Government Department, any manual labour is exercised in or incidentally to the making, altering, repairing, ornamenting, finishing, washing, cleaning, or adapting for sale, of articles not intended for the use of the institution, the provisions of the principal Act shall, subject to the provisions of this Act, apply to those premises notwithstanding that the work carried on therein is not carried on by way of trade or for the purposes of gain, or that the persons working therein are not working under a contract of service or apprenticeship.

(b) See p. 498, *supra*.

(c) For penalty, see sect. 135 of prin-

cipal Act.

(d) See p. 524, *supra*.

(2) If in any institution to which this section applies the persons having the control of the institution (hereinafter referred to as the managers) satisfy the Secretary of State that the only persons working therein are persons who are inmates of and supported by the institution, or persons engaged in the supervision of the work or the management of machinery, and that such work as aforesaid is carried on in good faith for the purposes of the support, education, training, or reformation of persons engaged in it, the Secretary of State may by order direct that so long as the order is in force the principal Act shall apply to the institution subject to the following modifications :—

- (a) The managers may submit for the approval of the Secretary of State a scheme for the regulation of the hours of employment, intervals for meals, and holidays of the workers, and of the education of children, and, if the Secretary of State is satisfied that the provisions of the scheme are not less favourable than the corresponding provisions of the principal Act, the Secretary of State may approve the scheme, and upon the scheme being so approved the principal Act shall, until the approval is revoked, apply as if the provisions of the scheme were substituted for the corresponding provisions of the principal Act; any scheme when so approved shall be laid as soon as possible before both Houses of Parliament, and if either House, within the next forty days after such scheme has been laid before that House, resolve that the scheme ought to be annulled, the scheme shall, after the date of the resolution, be of no effect without prejudice to the validity of anything done in the meantime thereunder, or to the making of any new scheme;
- (b) The medical officer of the institution (if any) may, on the application of the managers, be appointed by the chief inspector of factories to be the certifying surgeon (*e*) for the institution;
- (c) The provisions of section one hundred and twenty-eight of the principal Act (*f*) as to the affixing of an abstract of the principal Act and of notices shall not apply, but amongst the particulars required to be shown in the general register (*g*) there shall be included the prescribed particulars of the scheme, or where no scheme is in force the prescribed particulars as to hours of employment, intervals for meals, and holidays, and education of children, and other matters dealt with in the principal Act;
- (d) In the case of premises forming part of an institution carried on for reformatory purposes, if the managers of the institution so give notice to the chief inspector of factories, an inspector shall not, without the consent of the managers or of the person having charge of the institution under the managers, examine an inmate of the institution save in the presence of one of the managers or of such person as aforesaid:

Provided that the Secretary of State, on being satisfied that there is reason to believe that a contravention of the principal Act is taking place in any such institution, may suspend the operation of

(*e*) See sects. 122—124 of principal Act, at p. 528, *supra*.

(*f*) See p. 530, *supra*.

(*g*) See sect. 129 of principal Act.

this provision as respects that institution to such extent as he may consider necessary ;

- (c) The managers shall not later than the fifteenth day of January in each year send to the Secretary of State a correct return in the prescribed form, specifying the names of the managers and the name of the person (if any) having charge of the institution under the managers, and such particulars as to the number, age, sex, and employment of the inmates and other persons employed in the work carried on in the institution as the Secretary of State may require, and shall, if any requirement of this paragraph is not complied with, be liable to a fine not exceeding five pounds.

SUPPLEMENTAL.

Inspection
of certain
premises.

6. Where in any premises which are subject to inspection by or under the authority of any Government department any manual labour is exercised, otherwise than for the purposes of instruction, in or incidental to the making, altering, repairing, ornamenting, finishing, washing, cleaning, or adapting for sale, of any article, and the premises do not constitute a factory or workshop by reason that the work carried on therein is not carried on by way of trade or for the purposes of gain, or by reason that the persons employed in the work are not working under a contract of service or apprenticeship, the Secretary of State may arrange with the department that the premises shall, as respects the matters dealt with by the principal Act, be inspected by an inspector appointed under that Act, and where such an arrangement is made, inspectors appointed under the principal Act shall have, as respects such matters as aforesaid, the like right of entry and inspection as is conferred on inspectors of the department concerned.

Short title,
construction,
commence-
ment, and
repeal.

7.—(1) This Act may be cited as the Factory and Workshop Act, 1907, and shall be construed as one with the Factory and Workshop Act, 1901, and the Factory and Workshop Act, 1901, and this Act may be cited together as the Factory and Workshop Acts, 1901 and 1907.

(2) This Act shall come into operation on the first day of January one thousand nine hundred and eight.

(3) Section one hundred and three of the Factory and Workshop Act, 1901 (*h*), is hereby repealed.

(*h*) See p. 517, *supra*.

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